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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 196.

JOSEPH J. DARLINGTON AND GEORGE W. GRAY, EXECUTORS OF PHILIP A. TRACY, DECEASED, APPELLANTS,

vs.

ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, AND LUNETTE TURNER, BY WILMER TURNER, NEXT FRIEND.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MARCH 14, 1905.

(19,660.)

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n the Court of Appeals of the District of Columbia

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oseph J. Darlington et al., Executors, Appellants,
vs.
Erle H. Turner et al.
No. 1266.

Supreme Court of the District of Columbia.

Erle H. Turner, Wilmer Turner, Ashby Turner, and Lunette Turner, by Wilmer Turner, Their Next Friend, Complainants,
vs.
Joseph J. Darlington and George W. Gray, Executors of Philip A. Tracy, Deceased, Defendants.
No 20552. In Equity.

Jnited States of America, *ss:*
District of Columbia,

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:—

1 *Original Bill.*

Filed June 10, 1899.

In the Supreme Court of the District of Columbia.

Erle H. Turner, Wilmer Turner, Ashby Turner, and Lunette Turner, by Wilmer Turner, Their Next Friend,
vs.
Joseph J. Darlington and George W. Gray, Executors of Philip A. Tracy, Deceased.
No. 20552. In Equity.

To the supreme court of the District of Columbia, holding a special term in equity:

The bill of complaint of Erle H. Turner, Wilmer Turner, Ashby Turner and Lunette Turner against Joseph J. Darlington and George W. Gray, respectfully shows as follows:

1. The complainants Erle H. Turner and Wilmer Turner are of full age and sue in their own right. The complainants Ashby Turner and Lunette Turner are infants under the age of twenty-one years and sue in their own right, bringing this their bill through their sister, Wilmer Turner, as their next friend.

The defendants Joseph J. Darlington and George W. Gray are sued as the executors of one Philip A. Tracy, deceased, late a resident of this District.

The complainants are all the children of Thomas M. Turner, formerly of Minden, Louisiana, and now of Vernon, Texas, and are the nieces and nephews of one Silas H. Turner, deceased, late a resident of Warrenton, Virginia.

2 2. Complainants further show upon information and belief that in the month of April, 1888, and for many years prior thereto, one Philip A. Tracy was the confidential agent and trustee of Silas H. Turner, and as such was entrusted by the said Silas H. Turner, with large sums of money for investment for the benefit of the said Silas H. Turner; aggregating up to that time about twenty-nine thousand dollars.

3. That on or about the thirtieth day of April, 1888, said Silas H. Turner requested the said Philip A. Tracy to prepare a will, to be executed by the said Silas H. Turner. That in compliance with said request said Tracy prepared said will in his, Tracy's own handwriting, and that said Silas H. Turner in the presence of said Tracy and of one George G. Fenton executed said paper, the said Tracy and Fenton subscribing the same as witness- thereto. The said will is in the words and figures following:

" Washington, D. C., *April* 30, 1888.

" I hereby give and bequeath to the four children of my brother " Thomas M. Turner, of Minden, Louisiana, all property real and " personal, owned by me or in which I have any interest at the time " of my death, and appoint Philip A. Tracy to distribute the proceeds of the said property equally between them.

" S. H. TURNER.

" Witness-:
" PHILIP A. TRACY.
" GEO. G. FENTON."

4. On the said 30th day of April, 1888, Thomas M. Turner,
3 the brother of said Silas H. Turner, was a citizen and resident
of the town of Minden in the State of Louisiana, where all of these complainants then resided, and was the father of four children, who are these complainants, the complainant Erle H. Turner being then in his 19th year, the complainant Wilmer Turner being then in her 13th year, the complainant Ashby Turner being then in his 9th year and the complainant Lunette Turner being then in her 6th year.

5. The said Silas H. Turner departed this life September 21, 1888, at Warrenton, Fauquier county, Virginia, and thereafter and on

the twenty-eighth day of November 1888, the said will was upon the testimony of the said Tracy and Fenton, by the county court for Fauquier county, in the State of Virginia, admitted to probate and record as the last will and testament of said Silas H. Turner.

6. Complainants further show that as appears therein the said will appointed no executor and no person was ever appointed administrator of the estate of said Silas H. Turner, but complainants are informed and believe that at the time of the writing and execution of said will and continuously thereafter, and at the time of the death of the said Silas H. Turner and continuously thereafter up to the death of said Philip A. Tracy, the said Tracy was and continued to be in the possession of the entire estate of said Silas H. Turner, which consisted at or about the time of the death of said Turner of promissory notes of various persons, secured by deed of trust upon real estate in this District and of the interest in money accruing due and payable thereon and amounting in the aggregate to about thirty thousand dollars.

4 7. That shortly before the death of said Silas H. Turner the said Philip A. Tracy gave to said Silas H. Turner a memorandum, or list, wholly in the handwriting of the said Philip A. Tracy, giving the dates and amounts of the promissory notes held by him, said Tracy, but belonging to said Silas H. Turner and the names of the makers thereof, which said list or memorandum is in the following words and figures:

"S. H. TURNER.

"Nov.	18, '82.	W. Z. Partello *Paid*	0000
" "	1, '79.	Susan W. McNamee	1700
"Jan'y	19, '81.	Edwin F Jones	1000
"April	7, '75.	J. N. Hollidge	800
"Mar.	22, '84.	John B. Taylor	1000
" "	" "	" " "	1000
"July	12, '81.	Flora V. Andrews (2)	1000
"June	6, '85.	Jennie J. West	3400
"April	3, "	Caroline Isdell (2)	1335.20
"Dec.	15, "	Eliz. V. Lee	600
" "	" "	" " "	600
"Jan'y	8, '86.	Mary J. Lewis (3)	1200
"Dec.	30, '85.	John L. Carusi..	1350
"May	19, '86.	Julius Rehwold (4)	2200
"Dec.	24, '85.	Rufus A. Morrison	1500
"Oct.	30, '86.	John B. Avery (4)	800
" "	2, "	Thomas R. Benton (15)	1800
"June	1, "	G. N. La Fetra	1036 90
"April	18, '87.	L. A. Grant	300
"Aug.	20, '85.	D. B. Groff	1500
			24122 10

" 1888.		Am't for'd..........	$24122 10
" Feb.	18.	C. W. Baldwin	2500
5			
" Jan'y	27.	S. H. Nixon (3)...............................	1350
" Mar.	12.	D. B. Groff	1000
			28972.10 "

And complainants further show, upon information and belief, that upon an examination of the land records of the District of Columbia, the fact is disclosed that deeds of trust were duly executed and recorded, at or about the dates given in the foregoing list, by parties bearing the names therein given, securing, upon real estate in the District of Columbia, notes in the amounts specified in said list; that the land records aforesaid further show the fact that the said notes were paid subsequent to the death of the said Silas H. Turner. And these complainants further show upon information and belief that all the said promissory notes, aggregating twenty-eight thousand nine hundred and seventy-two dollars and ten cents were collectible and were actually paid, after the death of the said Silas H. Turner, together with all interest thereon due. But these complainants have no means of knowing what disposition the said Philip A. Tracy made of the funds arising from the payment of the said notes and interest, and they are advised and believe and therefore charge that they are entitled to have from the said defendants a full discovery as to the disposition made by the said Tracy of the said funds.

8. Complainants further show upon information and belief, that shortly after the death of the said Silas H. Turner, the said Thomas M. Turner, the brother of said Silas and father of these complainants exhibited said list or memorandum to said Tracy at the United States Post-Office Department in the city of Washington, and
6 the said Tracy then and there acknowledged the said list to be in his, said Tracy's, handwriting and acknowledged it to be a correct list of promissory notes in his, Tracy's possession, belonging to the said Silas H. Turner, and then and there stated that the same were as good as gold.

9. Complainants further show that the said Tracy never at any time distributed the proceeds of said property of said Silas H. Turner in his possession, or any part thereof, among these complainants as required by the said will; nor did he at any time pay over the same to any one legally entitled thereto, except that at divers times between the years 1890 and 1898 he paid to the complainant Erle H. Turner certain small sums of money, which said Tracy in a letter to said Erle H. Turner, dated February 24th, 1898, claimed aggregated the sum of fourteen hundred dollars. The complainant, Erle H. Turner, kept no accurate account of the sums so paid to him by the said Tracy and is therefore unable to state the exact aggregate thereof, but he does not believe the same would amount to so

much as fourteen hundred dollars. The said Tracy having claimed, in his lifetime, to have kept an accurate account of said payments to the complainant Erle H. Turner, said complainant is willing to allow him credit for the full amount claimed by said Tracy, namely fourteen hundred dollars, against the balance due said complainant.

10. Complainants further show that the said Tracy never at any time rendered any accounts to them or to any one for them, of his doings as trustee, or as to the investments he made of said fund committed to his hands, or of the profits therefrom arising,
7 nor did he ever pay over to these complainants any part of
the said estate or of the said profits save the payments made to the complainant Erle H. Turner, as hereinbefore stated, but that on the contrary the said Tracy retained in his possession, down to his death, with the exception of the fourteen hundred dollars aforesaid, the entire trust fund, principal, interest and profits, and the same have come into the possession of the defendants, his executors.

11. Complainants further show that during all the time from the death of said Silas H. Turner to the death of said Tracy, the said Tracy acknowledged his possession of said trust fund and his trusteeship thereof, both orally and in writing to the complainant Erle H. Turner and to the mother of these complainants and to others, and that within a few months of his death the said Tracy, in writing, acknowledged his possession of the complainants' said trust fund, acknowledged his trusteeship thereof and represented the said fund was invested, together with money of his own, in land, which he held for the benefit of these complainants, and the said Tracy never at any time, to the knowledge of these complainants, denied or questioned their rights to said fund or his trusteeship with reference thereto, but on the contrary, when appeals were made to him in behalf of these complainants, for financial aid from said fund, while admitting their right thereto, he represented that owing to the business depression in the country the failure of the makers and endorsers of the notes, and the depreciation in value of the real estate in which the trust fund was invested, he was unable to collect either principal or income therefrom.

8 13. Complainants fnrther show that they are informed and
believe that said Tracy departed this life on or about the — day of July, 1898, testate having by his last will appointed the defendants Joseph J. Darlington and George W. Gray, his executors. That the said last will has been duly admitted to probate by this conrt and letters testamentary have been issued to said defendants, who have duly qualified as executors and are acting as such.

14. Complainants further show that on or about September 21st, 1898, the claim of the complainant Erle H. Turner for an account and distribution of the trust estate, was made to the defendants, and on the 28th of October, 1898, said defendants as executors declined to recognize the right of these complainants to an account and distribution of the trust fund.

15. Complainants further show that they are informed by the said defendants that the testator, Philip A. Tracy, left to his said

executors written instructions, to oppose by all legal means in their power any claim by these complainants against the estate of said Tracy, and in said written instructions to his said executors asserted that he was not a trustee of the said fund, that he never had any of the funds of Silas H. Turner in his possession or control after the death of said Turner, notwithstanding the fact that these complainants have in their possession, as hereinbefore shown, numerous letters from the said Tracy, written at divers times, from shortly after the death of said Silas H. Turner up to within three months of the death of said Tracy, in which said letters he acknowledges his possession of the said trust fund and claims that the same is invested by him for the benefit of these complainants.

9 16. These complainants never had any knowledge or intimation from any source that said Tracy denied the possession of said trust fund or his responsibility therefor as trustee until some time in February, 1899, when the counsel of these complainants was informed by the defendant Darlington of the substance of the said written instructions left by said Tracy to his executors. These complainants show that they have not had access to the said written instructions left by said Tracy to his said executors, but they are advised and believe that they are entitled to a discovery thereof by said executors and that this court is entitled to know, for the purpose of this proceeding, the exact representations which the said Tracy in said writing makes with respect to the claim of these complainants.

17. Complainants further show that the defendant Gray is not an attorney and counsellor at law, and that the defendant Darlington though an attorney and counsellor at law was never the counsel of said Tracy, and the said written instructions were not confided to him in such relation, but came to his knowledge and possession in common with his co-executor, the defendant Gray, solely in his capacity as executor and only after the death of said Tracy.

18. Complainants further show that the said Tracy represented to the complainant, Erle H. Turner, that he, Tracy, kept careful and accurate accounts of the said trust estate, its investment and income, and carefully preserved all vouchers for disbursements and expenses thereof, that the accounts and all papers pertaining to said trust were in a box in a safe deposit company in Washington and that should said Tracy die before settling up and distributing said
10 trust fund there would be no difficulty in settling matters after his death, as everything thereto pertaining would be found in said box; and these complainants are advised and charge that if the said Tracy left any such accounts and vouchers they are entitled to a full discovery thereof by the said defendants.

19. Complainants further show that they were in entire ignorance of all facts relating to said trust estate from the time of said Silas H. Turner's death until about September 1898 when the complainant Erle H. Turner accidentally learned of the death of said Tracy as hereinafter stated, and immediately engaged counsel to ascertain their rights. That these complainants resided in places

remote from Washington; at the time of said Silas H. Turner's death they resided in Minden, Louisiana, and all complainants were then infants; and about fifteen months thereafter they removed to Vernon, Texas; that two of these complainants are still infants of tender years; that the complainant Wilmer Turner did not reach her majority until October 11, 1896, at which time and for some years before, and since she was separated from her family, being forced to support herself by teaching in Nelson county, Virginia, where she is still so employed; while the complainant Erle H. Turner, who came of age, on the 21st day of October, 1890, was for some time in the far Western States seeking to earn his living and subsequently went to Philadelphia, Pennsylvania, where he secured employment. That during all the time since the death of said Silas H. Turner these complainants have been without financial means and too poor to come to Washington and too ignorant of any facts to be able to advise with counsel, and that they were
11 further induced to inactivity by the representations made by said Tracy, to their mother and the complainant Erle H. Turner, that the trust funds were invested in land or in notes which were during all said time unsalable and uncollectible; and furthermore complainants were lulled into security by the assurances made by said Tracy to complainant Erle H. Turner, that he, Tracy, was doing the best possible for the interests of all these complainants, without once having denied the existence of the trust estate or their rights and his obligations in the premises with reference to said trust estate.

20. Complainants further show that the circumstances under which the complainant Erle H. Turner learned of the death of said Tracy were as follows: On September 14th, 1898, he wrote to the said Tracy requesting some money and received an answer from the defendant Darlington dated September 17th, 1898, by which complainant learned for the first time of the death of said Tracy in the previous July, and that he had left a will appointing said defendants Darlington and Gray executors. Some time in the month of May, 1898, an express package for complainant Erle H. Turner had been delivered at his boarding-house in Philadelphia, when he was not in the house, and by accident or inadvertence the package was not actually delivered to him until long after; that said express package contained a deed dated April 27th, 1898, from said Tracy to said Erle H. Turner acknowledged by said Tracy on May 11th, 1898, and purporting to convey an undivided one-half of the interest of said Tracy in square numbered 649 in the city of Washington, District of Columbia. That with the said deed was a letter dated April 27th, 1898, from William E. Edmonston to
12 Philip A. Tracy, but there was no letter or communication from said Tracy; that complainant Erle H. Turner never received any explanation from said Tracy as to said deed. That by reason of his obligation to earn his living in Philadelphia this complainant was unable to visit Washington until some time in September, 1898, when he went to see said William E. Edmonston, the president of the Columbia Title Company, the writer of the letter afore-

said, who took him to the register of wills office and read said complainant the will of said Philip A. Tracy. The said complainant Erle H. Turner then, at the suggestion of said Edmonston, went to see the defendant Joseph J. Darlington, one of the executors named in said will, and not finding him at his office, called on the other defendant, George W. Gray. Defendant Gray stated to said complainant Erle H. Turner that he, Gray, was not a lawyer, and that it would be necessary for complainant to see the defendant Darlington on the subject. Upon reporting these facts to Mr. Edmonston the said Edmonston advised complainant Erle H. Turner to consult counsel, which he accordingly did, and thereafter by advice of counsel made search throughout the family for any letters or communications from said Philip A. Tracy with reference to the trust estate in his hands.

21. That the domicil and citizenship of the parents of complainants have always been since the birth of these complainants either in the State of Louisiana, which was their domicil, until about the — day of August, 1889 or in the State of Texas, which has been since and is now the domicil of said parents and of all complainants, except complainant Erle H. Turner, whose domicil is now Philadelphia, Pennsylvania.

13 Complainants are informed and believe and therefore aver that by the laws of Louisiana and of Texas the parents of minor children are not of right guardians of the estate of such minors, and no person is authorized to receive or demand the estate of any minor domiciled in either of said States, except such person as shall be duly appointed by a court of the States having competent jurisdiction; and that neither the father nor the mother of any of these complainants nor any other person has ever been appointed by any court guardian of either the person or estate of any one of these complainants, and no one of these complainants has now or has ever had a legal guardian of the person or estate and at no time has there been any person in being competent in law to demand or receive, in their behalf, any estate for any of these complainants, until, by reason of reaching their majority, two of these complainants have become *sui juris*.

Wherefore and by reason of the premises these complainants pray:—

1. That the United States writ of subpœna may issue to the defendants Joseph J. Darlington and George W. Gray, commanding them and each of them to appear in this cause and to answer the exigencies of this bill.

2. That the said defendants be required to make full discovery of any written instructions left by their testator Philip A. Tracy as to any rights or claims of these complainants with reference to any estate or funds in the hands of the testator of said defendants, and to set forth the same in their answer hereto; and that the said defendants be required specifically to discover and to set forth
14 in their answer hereto the full contents of the written instructions of the testator mentioned in the 16th paragraph of this

bill, the existence and general tenor of which have been disclosed by said defendants or one of them to the counsel of these complainants.

3. That by the decree of this court the said Philip A. Tracy deceased, be adjudged to have been from the death of Silas H. Turner in the proceedings mentioned to the time of his, the said Tracy's death, the trustee for these complainants under the will of the said Silas H. Turner as to the whole estate of the said Silas H. Turner, and particularly as to the promissory notes in paragraph seven of this bill mentioned, and that as such trustee the said Philip A. Tracy was accountable for said trust funds during his life, and that the executors of the said Tracy, the defendants herein, are accountable for the same since his death.

4. That the defendants make full and complete discovery as to what disposition was made by their testator of the particular notes in paragraph seven of this bill mentioned aggregating in amount twenty-eight thousand nine hundred and seventy-two dollars and ten cents, more or less, and the interest thereon.

5. That said defendants make full discovery as to what proceeds were realized from any disposition of said notes, and as to how said proceeds were used and invested, and as to what profits, if any, were realized by such use or investment, and as to what disposition was made of said profits.

6. That defendants be required to account in this suit with these complainants for the amount of said notes in paragraph seven mentioned, together with the interest thereon and the proceeds thereof and any profits realized from the use or investment of the said proceeds of said notes and interests, or of any profits, together with interest upon all said money from the twenty-first day of September, 1888.

7. That the defendants be decreed to *be* pay over to these complainants the total amount of said trust estate to which they may be found entitled on a proper accounting herein together with all interest due thereon and all profits realized therefrom.

8. That these complainants may have such other and further relief as the nature of their case may require and to this honorable court may seem fit and proper.

The defendants to this bill are Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased.

ERLE H. TURNER,
WILMER TURNER,
ASHBY TURNER, &
LUNETTE TURNER,
By WILMER TURNER,
Their Next Friend.

CARLISLE & JOHNSON,
Solicitors for Complainants.

16 STATE OF PENNSYLVANIA, } *ss:*
City and County of Philadelphia, }

Erle H. Turner being duly sworn deposes and says: I am one of the complainants named in the annexed and aforegoing bill of complaint by me subscribed, against Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy deceased. I have read the said bill and know the contents thereof, and the facts therein stated as of my own personal knowledge are true and those stated upon information and belief I am credibly informed of and believe to be true.

ERLE H. TURNER.

Subscribed and sworn to before me this 5″ day of June, A. D. 1899.

[SEAL.] FRANK CRAVEN, (Stamps)
Notary Public. (2)

STATE OF PENNSYLVANIA, } *ss:*
County of Philadelphia, }

Affidavit (Notary).

I, M. Russell Thayer, prothonotary of the county of Philadelphia, and clerk of the courts of common pleas of said county, which are courts of record, having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, do certify, that

Frank Craven, Esquire, before whom the annexed affidavit 17 was made, was at the time of so doing a notary public for the Commonwealth of Pennsylvania, residing in the county of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere; and that I am well acquainted with the handwriting of the said notary public, and verily believe his signature thereto is genuine, and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said court, this fifth day of June, in the year of our Lord one thousand eight hundred and ninety-nine (1899).

M. RUSSELL THAYER,
Prothonotary.

(I. T. R. stamps.)

18 STATE OF VIRGINIA, }
County of Nelson, } *ss:*

Wilmer Turner being duly sworn deposes and says: I am one of the complainants named in the annexed and aforegoing bill of complaint, by me subscribed for myself and as next friend for Ashby Turner and Lunette Turner, against Joseph J. Darlington and George W. Gray executors of Philip A. Tracy deceased. I have read the said bill and know the contents thereof, and the facts therein stated as of my own knowledge are true and those stated upon information and belief I am credibly informed of and believe to be true.

WILMER TURNER.

Subscribed and sworn to before me this 8th day of June, A. D. 1899.

[SEAL.] R. K. ANDERSON, *N. P.*

(5 I. R. stamps)

19 *Joint Answer of Joseph J. Darlington et al.*

Filed August 21, 1899.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER, WILMER TURNER, ASHBY Turner, and Lunette Turner, by Wilmer Turner, Their Next Friend,
vs.
JOSEPH J. DARLINGTON and GEORGE W. Gray, Executors of Philip A. Tracy, Deceased.
} In Equity. No. 20552.

To the supreme court of the District of Columbia, holding a special term in equity:

The joint answer of Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, to the bill of complaint of Erle H. Turner, Wilmer Turner, Ashby Turner, and Lunette Turner, by Wilmer Turner, their next friend.

These defendants respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

20 1. These defendants admit that they are the executors of Philip A. Tracy, deceased.

In respect of the other allegations in the first paragraph of the bill of complaint contained, they have no knowledge, and neither admit nor deny the same, but so far as they are relevant and material to the case they pray legal and competent proof thereof.

2. These defendants are informed and believe, and on information and belief admit, that during the life of the said Philip A. Tracey, he, the said Philip, had business relations and dealings with Silas H. Turner mentioned in the second paragraph of the bill of complaint, in the course of which the said Philip received and held certain securities and evidences of indebtedness belonging to the said Silas H. Turner, but as to the particulars of said dealings and as to sums of money received by said Tracy from the said Turner, and as to the amount thereof, and as to all the other allegations in said second paragraph, these defendants have no knowledge, and do not admit or deny the same, but require legal and competent proof thereof.

3. These defendants have no knowledge of the truth of the allegations contained in the third paragraph of the bill of complaint, and neither admit nor deny the same, but require legal and competent proof thereof.

4. These defendants have no knowledge of the truth of the allegations contained in the fourth paragraph of the bill of complaint, and do not admit or deny the same, but require legal and competent proof thereof.

21 5. They are informed and believe, and therefore admit on information and belief, that the said Silas H. Turner died on the 21st of September 1888, at Warrenton, Virginia, but they have no knowledge as to the truth of the other allegations contained in the fifth paragraph of the bill of complaint, and neither admit nor deny the same, but require legal and competent proof thereof.

6. These defendants have no knowledge of the contents of the will of the said Silas H. Turner, and do not admit or deny the allegations concerning the contents thereof set out in the sixth paragraph of the bill of complaint, but require legal and competent proof thereof.

They are informed and believe that it is not true, and on information and belief they deny, that at the time of the death of the said Silas H. Turner and continuously thereafter, up to the death of the said Philip A. Tracy, the said Tracy was and continued to be in the possession of the entire estate of the said Silas H. Turner.

They are informed and believe, and on information and belief aver, that at the time of the death of the said Silas H. Turner there were in the possession of the said Tracy certain securities and evidences of indebtedness that had belonged to the said Silas H. Turner and which were properly accounted for and disposed of by the said Philip A. Tracy immediately after the death of the said Silas H. Turner, as is hereinafter fully set forth, and that they have no knowledge or information except as is hereinafter stated that at the time of the death of the said Philip A. Tracy on the 5th day of July,
22 A. D. 1898, the said Tracy had in his possession any promissory notes or other securities or money or other property

belonging or that had belonged to the said Silas H. Turner or to his estate.

7. These defendants have no knowledge of the truth of the averments contained in the seventh paragraph of the bill of complaint in respect of a memorandum or list of certain promissory notes therein set out, alleged to have been given by the said Philip A. Tracy to the said Silas H. Turner, or of the promissory notes described in said memorandum, save as hereinafter appears and is stated.

They do not know, and therefore neither admit nor deny the allegations in said paragraph in respect of the security for or payment of said promissory notes, except as hereinafter stated.

They do not know what disposition was made of the said promissory notes described in said seventh paragraph or of the proceeds thereof, save as hereinafter appears and is stated.

They aver that they do not know and have no information or belief that the said promissory notes or any of them or the proceeds of any of them came into the possession of these defendants.

8. These defendants have no knowledge of the truth of the allegations contained in the eighth paragraph of the bill of complaint, and neither admit nor deny the same, but so far as they are material to the case they pray legal and competent proof thereof.

23 9. These defendants have no knowledge of the truth of the allegations contained in the ninth paragraph of the bill of complaint, and neither admit nor deny the same, but so far as they are material to the case, pray legal and competent proof thereof.

In respect of the disposition of the proceeds of certain of the notes described in the seventh paragraph of the bill of complaint and as to the disposition of the proceeds thereof, these defendants hereinafter set forth fully all the facts within their knowledge.

10. These defendants have no knowledge of the truth of the allegations made in the tenth paragraph of the bill of complaint as to the failure of the said Tracy to render accounts in respect of funds alleged to have come into his hands, or payments made thereof except as hereinafter stated, and they neither admit nor deny the same, but so far as they are material to the case, pray legal and competent proof thereof.

They deny on information and they have no knowledge or belief except as is hereinafter stated that the said Tracy retained in his possession down to his death funds or securities that came into his possession from the said Silas H. Turner, and that said funds and securities, principal, interest and profits came into the possession of these defendants as the executors of the said Philip A. Tracy.

11. These defendants have no knowledge of the truth of
24 the allegations contained in the eleventh paragraph of the
bill of complaint, and neither admit nor deny the same, but
so far as they are material to the case, pray legal and competent
proof thereof.

12. These defendants admit the allegations contained in that paragraph of the bill of complaint which should be numbered *twelve* but is erroneously numbered *thirteen* and which sets forth the death

of the said Philip A. Tracy, the appointment by will of these defendants as his executors, the probate of said will, the issue of letters testamentary to these defendants as executors, and that they duly qualified and are acting as such.

13. These defendants answering the thirteenth (erroneously numbered fourteen) paragraph of the bill of complaint deny that the complainant Erle H. Turner made claims to the defendants for the distribution of the alleged "trust estate" and they deny that they declined to recognize the right of the complainants to an account and distribution of the alleged trust fund, and they aver that the only communication made by these defendants or either of them to the said complainants or any of them was the verbal request made by the defendant George W. Gray to the said Erle H. Turner in answer to the inquiries made by the said Erle, that he the said Erle should see the defendant Joseph J. Darlington and confer with him, which the said Erle H. Turner did not do, and the two letters of the said Darlington to the said Erle H. Turner are as follows:

25 Copy.

J. J. Darlington, attorney-at-law; office, 410 Fifth street N. W.

WASHINGTON, D. C., *September* 15, 1898.

E. H. Turner, Esq., 1917 Col. Ave., Phila., Pa.

DEAR SIR: Your letter addressed to the late T. A. Tracy, mailed on the 14th instant has been referred to me, one of his executors.

Mr. Tracey died in July last, leaving a last will and testament appointing George W. Gray and myself executors of his estate. Is there anything that we can do for you?

Yours very truly,
(S'g'd) J. J. DARLINGTON.

Copy.

J. J. Darlington, attorney-at-law; office, 410 Fifth street N. W.

WASHINGTON, D. C., *September* 16, 1898.

E. H. Turner, Esq., Phila., Pa.

DEAR SIR: Mr. Tracey's will does not mention any such trusts as that indicated in your telegram.

Yours very truly,
(S'g'd) J. J. DARLINGTON.

26 14. These defendants answering so much of the fourteenth (erroneously numbered fifteen) paragraph of said bill of complaint as relates to written instructions left by the said Philip A. Tracy to his executors, say that with the papers of the said Philip A. Tracy there came into the possession of these defendants, and they still retain, a paper-writing in the words and figures following:

"WASHINGTON, D. C., —, 1898.

To the executors of my last will and testament:

Some time in 1871, Silas H. Turner of Virginia, whom I had known for a long time, of his own volition and without solicitation from me, came to the city and asked me to aid him in investing some twelve thousand dollars ($12,000.) in real-estate notes. I consented and in a few weeks the whole amount was invested, and he took the notes home with him. The interest was payable semi-annually, and, for a time, he sent me notes by mail about the time the interest was due so that it could be credited on the notes to satisfy the maker. This become irksome and, after a time, he brought me the notes, keeping a list of them, and asked me to keep them to save him the trouble of sending them to me by mail whenever the interest was due. I kept the notes in an envelope with his name upon it, and about twice a year sent him a memorandum of interest paid, and when the amount reached several hundred dollars I would buy another note, and send him a memorandum of the same. Also when a note matured and was paid, I would buy another note, unless
27 he needed the money, which he rarely did, and send him a memorandum of it. This condition continued until 1888, when he died in Virginia leaving his entire estate to the three minor children of his brother then living in Louisiana. In his will he named me to settle up the estate and divide the money among the children; but, as the laws of Virginia require two witnesses to a will and says neither of them shall be an executor I could not qualify, and as the father if appointed could not have given the bond, I handed him the package of notes, advised him to deposit them in the Second National Bank of Washington D. C., which he did, and agreed to look after them and have them all paid, he being out of the city. His other relations, a sister — some nephews and nieces, were much displeased with the will, and threatened to attempt to have it set aside, but have not done so. The father, a good, honest man, took the money or most of it, went to Texas and bought a farm, and was doing well until the panic of 1893 came on. Since then they had a hard time, getting little or nothing for their farm products, and have written me some heart-rending letters wishing they had left the money here, the children are of age but of course the father could not pay them their parts of the estate, and though not a word has been said about it, I thought perhaps after my death, if they hear of it in time, some of them might attempt to hold me responsible, and if they should make such an attempt, I hereby authorize and direct my executors to employ the best counsel in the city, to defend my estate in the district courts and in the Supreme Court of the United States, if it be necessary to ap-
28 peal the case to that court, and to pay all costs and lawyers' fees out of my estate. I suppose some one would have to qualify as administrators under the will before any action could be taken. My turning the property over to the father helped to keep it in the possession of those to whom it was left, and to discourage

and shut out the dissatisfied relatives, for if any one had qualified the matter would have been open for a year, and they would undoubtedly have made an attempt to have the will set aside. This is a plain statement of the case intended for the private ears of my executors."

Which said paper-writing they tender themselves ready to produce when required to do so.

These defendants received no other paper-writing purporting to be instructions and no correspondence or other papers relative to the dealings or business between the said Philip A. Tracy and the said Silas H. Turner except as hereinafter stated.

These defendants neither admit nor deny the allegations made in said paragraph as to the contents of any letters written by said Tracy to the complainants or any of them or of any admissions made therein, but pray legal and competent proof thereof.

15. These defendants, upon information and belief admit the allegations contained in the fifteen- paragraph, erroneously numbered sixteen*th*, and they further say that they have never claimed or asserted that the said instructions were privileged communi-
29 cations, but on the contrary voluntarily disclosed the same to complainant's solicitors.

16. These defendants admit the allegations contained in the sixteenth paragraph, erroneously numbered seventeen, of the bill of complaint.

17. These defendants have no knowledge of the truth of the allegations contained in the seventeenth paragraph (erroneously numbered eighteen) of the bill of complaint relative to representations alleged to have been made by the said Tracy to the complainant Erle H. Turner.

They aver that no accounts or vouchers or other papers relating to the dealings or business between the said Philip A. Tracy and the said Silas H. Turner except that hereinbefore referred to and those hereinafter mentioned ever came into the possession of or became known to these defendants.

18. These defendants do not know the truth of the allegations contained in the eighteenth paragraph (erroneously numbered nineteen) of the bill of complaint, and neither admit nor deny the same, but so far as they are material to the case, pray legal and competent proof thereof.

19. These defendants admit that some time in September 1898 the complainant Erle H. Turner called on the defendant George W. Gray and was by him referred to the defendant Joseph J.
30 Darlington, and that the said complainant did not then see the said defendant Darlington.

These defendants neither admit nor deny the other allegations in said paragraph contained, but so far as they are material to the case, pray legal and competent proof thereof.

20. These defendants have no knowledge of the truth of the allegations contained in the twentieth paragraph (erroneously numbered twenty-one) of the bill of complaint as to the past and present dom-

icil of the parents of the complainants or of the complainants, and they neither admit nor deny the same, but pray legal and competent proof thereof.

21. These defendants further answering say that with the papers of the said Philip A. Tracy there came into the possession of these defendants a certain other paper-writing which is in the words and figures following:

"*Full List of Notes and Cash in the Hands of Philip A. Tracy, Belonging to S. H. Turner, Deceased, Nov.* 30, '88.

Date of notes.			
Mar. 22, '84.	Two	notes of John B. Taylor for $1,000 each	2,000
May 19, '86.	Two	" " Julius Rehwold, $300 each..	600
" " "	Two	" " " " $800	1,600
April 18, '87.	One	" " Louisa A. Grant	300
March 12, '86.	One	" " Diller B. Groff	1,500
" " "	One	" " " "	1,000
Dec. 15, '85.	Two	" " Eliza U. Lee, $600 each	1,200
31			
June 13, '88.	One	note of Roth & Moore	325
Jan'y 19, '81.	"	" " Edwin F. Jones	1,000
Feb. 18, '88.	"	" " Charles W. Baldwin	2,500
Jan'y 27, "	Three	" " Alban H. Nixon, $450 each	1,350
July 12, '81.	Two	" " Flora V. Andrews, $500 each	1,000
Oct. 30, '86.	Three	" " John B. Avery, $200 each	600
" 22, "	Seventeen	" " Thos. H. Benton, $120 each	2,040
Aug. 25, '88.	One	" " Frank W. Paige	3,000
Oct. 17, "	Three	" " J. L. Burns, $462.50 each	1,387.50
Nov. 6, "	One	" " E. V. Jarvis	200
Nov. 19, "	Two	C. S. McEwen ($600 each)	1,200
	"	lots on Md. Ave. N. E.	1,800
Sep. 28,		Cash, T. M. T.	439.25
Nov. 30,		" " in full	337.64
		(In'st now due)	600.
			$25,379.39

"Nov. 30, 88.—Received the above-described notes and cash in full under the will of S. H. Turner, deceased.

T. M. TURNER,
Natural Tutor and Agent for My Minor Children.

(Notes all placed in Second national bank by T. M. Turner) in pencil.

The original of said paper-writing is now in the possession of these defendants, and they tender themselves ready to produce the same when required to do so, and they aver on information and belief that the said Thomas M. Turner is the father of the complainants.

32 These defendants are informed and believe, and on information and belief say that the said Thomas M. Turner received the notes and money referred to in said last-mentioned paper-writing from the said Philip A. Tracy on the date on which the same purports to bear date, and immediately deposited the same to his own credit in the Second National Bank of Washington, D. C., for collection, and that the proceeds of said notes when collected were placed to the credit of the said Thomas M. Turner and subject to his check, and the entire proceeds of said notes were by the said Thomas M. Turner by his own checks drawn out of said bank, and as these defendants are informed and believe, the money so drawn out and received by the said Thomas M. Turner was by him applied for the benefit of the complainants who were members of the family of the said Thomas M. Turner, and were supported and maintained by him.

These defendants further answering say that the greater part and indeed nearly all of the promissory notes enumerated in said paragraph seven of the bill of complaint appear also in the aforesaid paper-writing containing a list of the promissory notes receipted for and delivered to the said Thomas M. Turner, the proceeds whereof were drawn out of said Second national bank by the said Thomas M. Turner and used by him as aforesaid, as will appear on comparing said paper-writing with the list contained in said paragraph seven.

And the defendants further aver that there have not come into their possession, nor have they so far as they know received the proceeds of any of the promissory notes enumerated in either
33 of said lists nor do they know nor have they any information
concerning the disposition or the proceeds of any of the promissory notes that are enumerated in said list set out in paragraph seven of the bill of complaint, that are not enumerated in said paper-writing set out in paragraph twenty-one of this answer.

Further answering these defendants say that at the time they received the paper-writings set out in the fourteenth and twenty-first paragraphs of this answer, there came into their possession also five or six letters dated in the early part of the year 1898, and purporting to be signed by the said complainant Erle H. Turner and addressed to the said Philip A. Tracy, and also nine receipts purporting to be signed by the complainant Erle H. Turner for money paid to him by the said Philip A. Tracy in respect of the estate of S. H. Turner deceased, dated respectively September 6, 1893, March 18, 1894, November 5, 1894, December 11, 1894, March 29, 1895, July 25, 1895, January 21, 1889, July 26, 1897, May 17, 1897, and being for sums amounting in the aggregate to $1,435., and for greater accuracy these defendants beg leave to refer to the said letters and receipts, and will produce the same when required to do so.

These defendants further aver that excepting said paper-writings described in said fourteenth and twenty-first paragraphs of this answer and said letters and said receipts, no papers, books or accounts came into their possession pertaining to or showing any business transactions, liabilities or obligations between the 34 said Silas H. Turner or his estate or the complainants or either of them and the said Philip A. Tracy, and that no other papers, books or accounts that came into their possession or of which they have any knowledge or information show that the complainants or any of them or the estate of the said Silas H. Turner now have or ever had any interest or right in any of the property or assets of the said Philip A. Tracy which came into the possession of these defendants as executors as aforesaid.

22. These defendants further answering say that at the time the promissory notes and other property described in said paper-writing set out in paragraph fourteen of this answer were delivered by the said Philip A. Tracy to the said Thomas M. Turner, that is to say, on the thirtieth day of November, 1888, the said receipt was signed by the said Thomas M. Turner as "Natural tutor and agent for my minor children," as appears therefrom.

As these defendants do not know in what State the said Thomas M. Turner and his said children the complainants had their domicil and residence at the time of the death of the said Silas M. Turner or afterwards, these defendants are not able to say what were the lawful powers and rights of the said Thomas M. Turner in the premises, and they leave the same to be determined by this honorable court upon the facts and the statutes applicable to those facts, when the same shall have been ascertained.

These defendants further say that the said Tracy never 35 accepted the office of executor under any will of the said Silas M. Turner, and never acted as such executor, but refused to accept said office.

23. These defendants further answering aver and insist that the said complainants are not entitled to the relief asked or to any relief in this action by reason of their gross and unconscionable delay and laches.

24. These defendants further aver and submit that the complainants show no right to maintain this action against these defendants.

And having fully answered, these defendants pray that they may be hence dismissed with their reasonable costs in this behalf sustained.

JOSEPH J. DARLINGTON.
GEORGE W. GRAY.

NATHANIEL WILSON,
Solicitor for the Defendants.

36 DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have heard read the foregoing answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

GEORGE W. GRAY.

Subscribed and sworn to before me this 21st day of August, 1899.

J. R. YOUNG, *Clerk*,
By H. P. GATLEY, *Ass't Clerk.*

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have heard read the foregoing answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

JOSEPH J. DARLINGTON.

Subscribed and sworn to before me this 21st day of August, 1899.

J. R. YOUNG, *Clerk*,
By H. P. GATLEY, *Ass't Clerk.*

37 *Replication, &c.*

Filed September 28, 1899.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL.
vs. } No. 20552. In Equity.
JOSEPH J. DARLINGTON ET AL.

The complainants hereby join issue with the defendants upon their answer filed herein.

CARLISLE & JOHNSON,
Solicitors for Complainants.

38 *Order Authorizing Investments.*

Filed July 14, 1900.

In the Supreme Court of the District of Columbia.

ERLE TURNER ET AL.
vs. } No. 20552. Equity.
GEORGE W. GRAY ET AL., Executors.

Order.

Upon consideration of the petition of George W. Gray and Joseph J. Darlington, executors, this day filed in the above-entitled cause, it is by the court, this 14th day of July, A. D., 1900, ordered that the said petitioners be, and they hereby are, authorized to make the investments in said petition set forth, namely, a loan of twenty-four thousand dollars ($24,000) to James Talty, secured by a first encumbrance upon sublots twenty-seven to thirty (27 to 30) both inclusive, in square numbered 286, and by a further first encumbrance upon the interest of the said James Talty in lots A, B, C and D, and the west half of lot twelve (12), in square numbered 431; and a loan of four thousand dollars ($4,000) to Robert C. Talty, secured by a first encumbrance on sublot eight (8), in square numbered 318, the said loans to bear interest at the rate of five per centum per annum, and payable three years after their date, with privilege to the borrower of taking up the same at any time within the said three years upon prepayment of interest for the period of three months.

E. F. BINGHAM, *C. J.*

39 *Copy of Tracy Will.*

Filed May 26, 1902.

Will.

I, Philip A. Tracy, of Washington, in the District of Columbia, knowing well the certainty of death and the uncertainty of the time thereof, do make and declare this and no other to be my last will and testament; that is to say:—

Item first: I direct that my executors, hereinafter named, shall collect all debts justly owing to my estate and pay all debts that I may justly owe, including my funeral expenses.

Item second: I direct that my executors shall sell for the highest price obtainable in cash, at public or private sale, as they may deem best, all my property both real and personal, and wheresoever situated, except that named in item eleventh of this will.

Item third: My executors shall purchase and cause to be erected in lot numbered one hundred and ninety-eight (198) in "Oak Hill" cemetery, in the District of Columbia, a family monument of Barre gray granite, of modern design, not less than twelve feet in height, whereon shall appear, in raised letters and figures, my family name, and the names of my father, mother, brother, sister and myself, and the date of the birth and death of each, as stated in a memorandum attached to this will. This monument to be erected and paid for as soon as practicable after my death, and before any of the following legacies are paid. 40

Item fourth: I give and bequeath to the Oak Hill Cemetery Company in the District of Columbia, one thousand ($1,000.) dollars in cash to be invested by the company, and the revenue and income derived from such investment to be used for the purpose of keeping lot No. 198 in the said cemetery in good order and condition, and for cleaning and repairing the monument whenever necessary.

Item fifth: My executors shall pay to the National Bank of the

Republic, in this city, the balance, if any, due on the note of my sister Adelaide Tracy, deceased, after deducting the proceeds of the sale of the Metropolitan Railroad stock held by the bank as collateral.

Item sixth: I give and bequeath to Mrs. Kate E. Lake, of Rectortown, Virginia, two hundred ($200.) dollars in cash.

Item seventh: I give and bequeath to Norman P. Lake, of Rectortown, Virginia, one hundred ($100.) dollars in cash, and my gold watch and chain.

Item eighth: I give and bequeath to Daniel H. Greene of Rectortown, Virginia, one hundred ($100.) dollars in cash.

Item ninth: I give and bequeath to the Home for Incurables in the District of Columbia, one hundred ($100.) dollars in cash, for the use of the home.

41 Item tenth: I give and bequeath to the trustees of Trinity Episcopal church, northeast corner of Third and C streets, N. W., in this city, two thousand (2,000) dollars in cash to help pay for the erection of a building for the use of the Sunday school.

Item eleventh: I give and bequeath to the "Little Sisters of the Poor," on H street, N. E., in this city, all my wearing apparel, trunks and books.

Item twelfth: The total sum of money remaining in the hands of my executors, I give and bequeath to the trustees of the Epiphany Church Home in this city, to help pay for the enlargement of the building now used as the home, or for the erection of another building for the same use and purpose.

I nominate, constitute and appoint George W. Gray and Joseph J. Darlington, of this city, the executors of this my last will and testament, having confidence in their honesty and believing that they will faithfully carry out my wishes and intentions.

In witness whereof I have hereunto set my hand this twenty-second * * * day of March, in the year of our Lord, one thousand eight hundred and ninety-four.

PHILIP A. TRACY.

Signed and declared by the testator, Philip A. Tracy, as and for
his last will and testament, revoking all others, in the presence of us,
who, at his request, and in his presence and in the presence
42 of each other, have subscribed our names as witnesses thereto.

ROB'T V. HUGHES,
1423 *F St., Washington, D. C.*
WILLIAM B. THOMPSON,
1419 *F Street, Washington, D. C.*
ISAAC C. SLATER,
1419 *F St. N. W., Washington, D. C.*

43 Baylis Tracy was born in Fauquier county, Virginia, September 15th, about 1790, died September, 1860.

Ann J. Tracy, born in Fairfax county, Virginia, February 2d, 1812, died July 14th, 1876.

James W. Tracy, born in Fauquier county, Virginia, August 1st, 1833, died January, 1859.

Adelaide Tracy, born in Fauquier county, Virginia, August 1st, 1837, died December 28th, 1891.

Philip A. Tracy, was born in Fauquier county, Virginia, August 18th, 1835.

The above names and dates to be inscribed on the monument to be erected in lot 198, Oak Hill cemetary, Georgetown D. C., by my executors.

January 25th, 1894.

PHILIP A. TRACY.

44 DISTRICT OF COLUMBIA, *To wit:*

On the 22nd day of June 1898 came George W. Gray, one of the executors and made oath on the Holy Evangels of Almighty God, that he does not know of any will or codicil of Philip A. Tracy late of said District, deceased, other than the aforegoing instrument of writing dated March 22, 1894 and that he received the same from Providence hospital, where the testator died and said Philip A. Tracy died on or about the 13th day of June 1898.

G. W. GRAY,
923 *I St. N. W.*

Sworn to and subscribed before me.
[SEAL.]

M. J. GRIFFITH,
Notary Public for the District of Columbia.

45 Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

AUGUST 18TH, 1898.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Robert V. Hughes and William B. Thompson, two of the subscribing witnesses to the foregoing last will and testament of Philip A. Tracy, late of the District of Columbia, deceased, and severally made oath on the Holy Evangels of Almighty God, that they did see the testator therein named sign this will, that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testator and in the presence of each other and of the other subscribing witness thereto.

Test:

J. NOTA McGILL,
Register of Wills.

46 In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

AUGUST 19TH, 1898.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Forrest F. Fadeley and made oath on the Holy Evangels of Almighty God that he is well and personally acquainted with Isaac C. Slater, one of the subscribing witnesses to the aforegoing last will and testament of Philip A. Tracy, late of the District of Columbia, deceased, and after examining the signature "Isaac C. Slater" as one of the witnesses to the will of the said Philip A. Tracy, declares the same to be in the handwriting of the said Isaac C. Slater; and that the said Isaac C. Slater is beyond the jurisdiction of this court.

In open court.

Test: J. NOTA McGILL,
Register of Wills.

47 Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, John R. Rouzer, deputy register of wills for the District of Columbia, clerk of the probate court, do hereby certify, that the foregoing is a true copy of the original will of Philip A. Tracy, deceased, and the proof thereof, filed and recorded in the office of the register of wills for the District of Columbia, clerk of the probate court, aforesaid; and that the said will after having been duly proven, as will appear by the proof thereto attached, was, by order of the said court, in accordance, with the laws of the District of Columbia, admitted to probate and record on the 19th day of August, A. D., one thousand eight hundred and ninety-eight.

I further certify, that I have compared the foregoing copy of said will, and the proof thereof, with the original record in said office, and find it to be a full, true and correct transcript thereof.

[SEAL.] Witness my hand and the seal of the said probate court, this 22nd day of May, A. D. 1902.

JOHN R. ROUZER,
Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

48 *Order Affirming Sale by Executors, &c.*

Filed May 26, 1902.

In the Supreme Court of the District of Columbia.

ERLE TURNER
vs.
GEORGE W. GRAY ET AL. } No. 20552. Equity.

Upon consideration of the petition of George W. Gray and Joseph J. Darlington, executors, in this cause filed, it is by the court this 26th day of May, A. D. 1902, ordered that said petitioners be, and they hereby are, authorized and directed to make sale of the parts of lots eleven (11) and twenty-four (24), in block six (6) of Todd and Brown's subdivision of "Mt. Pleasant and Pleasant Plains" described in the said petition for the price of five hundred ($500) dollars, two hundred ($200) dollars thereof to be paid in cash and the balance in one and two years, secured by a first incumbrance, with interest at the rate of six per centum per annum, payable semi-annually, and the said petitioners be, and they hereby are, authorized and directed to make conveyance of the said real estate to the purchaser upon compliance by him with the said terms.

A. B. HAGNER,
Asso. Justice.

49 *Decree, &c.*

Filed October 10, 1902.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL.
vs.
J. J. DARLINGTON ET AL. } In Equity. No. 20552.

This cause came on regularly to be heard upon the pleadings and evidence, and having been argued by counsel for complainants and defendants and submitted to and considered by the court, it is by the court, this tenth day of October, A. D. 1902, adjudged, ordered and decreed:

First. That the defendant's testator Philip A. Tracy was trustee for the complainants in respect of all of the property and estate of Silas H. Turner being or coming into the hands of said Tracy at and after the death of the said Silas H. Turner.

Second. That the complainants are entitled to an accounting from the defendants as executors of the said Philip A. Tracy of and concerning the moneys and properties received by said Tracy from said Silas H. Turner.

Third. That this cause be and the same hereby is referred to the auditor of this court to state such account, and that on such accounting the defendants shall be entitled to credit for the sums which it appears from the evidence were paid at various times by the said Tracy in his lifetime to Erle H. Turner, one of the complainants, after said Erle H. Turner had attained his majority.

50 Fourth. That for the purpose of stating the account herein directed to be stated and of ascertaining what credits the defendants may be entitled to the auditor is to consider all the testimony in the case bearing on that subject and is authorized to take further testimony, as the parties to this cause may desire, as to the correctness of the allegation of the defendants that the money received by Thomas M. Turner from said Tracy was expended for the benefit of the complainants or any of them, that the expenditures were reasonable for the complainants under the circumstances, and that the said Thomas M. Turner was unable to support the complainants, his children, from his own means.

Fifth. Upon the completion of said hearing before the auditor the said auditor shall report to this court the said statement of account and his proceedings under this reference for the final decree of this court thereon.

A. B. HAGNER,
Asso. Justice.

51 *Opinion of Justice Hagner.*

Filed October 10, 1902.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL. *vs.* J. J. DARLINGTON and GEORGE W. GRAY, Executors of the Will of Philip A. Tracy.	In Equity. No. 20552. Docket 47.

WASHINGTON, D. C., *October 7th*, 1902.

It is quite needless for me to detail at length the varied facts of this remarkable case, one of the most interesting I have ever known. The complainants, two of whom were minors when this suit was brought, and all under age when the spoliation complained of took place, are suing the estate of the trusted friend of the uncle who had bequeathed to them his whole estate. The painful feature of the case appears in the fact that they have been deprived of the benefit of the bequest through the fault of their father, who was enabled to defraud them by the culpable misfeasance and nonfeasance of the trustee appointed by their uncle to preserve and pay over to them their property. But the misconduct of the trustee cannot be excused because the father was associated with him in the wrong. If the trustee had been as innocent of evil motive as the children themselves, the case would only present the not uncommon question as to which of two innocent persons shall bear the consequences of the misdeeds of another, to be solved by the answer to the further question, which of the two enabled the wrongdoer to perpetrate the wrong?

52 1. The first objection interposed by the executors is that their testator, Tracy, could not be held accountable in equity, *as trustee*, with respect to the funds that came into his hands as the property of Silas Turner, and that Tracy received and held them only as *the agent* of Silas Turner; and therefore that whatever remedy against the estate of Tracy might be had, must be pursued in a court of law.

I consider this contention as untenable. The testimony as to the entire course of the dealings between Silas Turner and Tracy sufficiently establishes that their relations throughout were those of trustee and *cestui que trust;* and this relation is recognized in the testimony; and established as between Tracy and the children of Thomas M. Turner, in the words of the bequest in Silas Turner's will, which declares:

"I hereby give and bequeath to the four children of my brother, Thomas M. Turner, of Minden, Louisiana, all property, real and personal, owned by me or in which I have any interest at the time of my death, and appoint Philip A. Tracy to distribute the proceeds of said property equally between them."

Tracy's own statement in his instructions to his executors is a sufficient recognition of his fiduciary character with respect to the fund; and his conduct after the death of Silas showed a recognition of his character, as trustee with respect to the property.

Under these conditions, the familiar principle applies that whoever receives property or money to be paid to another, or to be applied to a particular purpose, is answerable as a trustee, and may
be sued at law or in equity if he does not apply it accord-
53 ingly. Taylor *vs.* Benham, 5 How., 233; Inglis *vs.* Snug Har-
bor, 3 Peters, 99; Hinkle *vs.* Wanzer *et al.*, 17th Howard, 353.

The peculiar propriety of recourse to equity for the settlement of the entire controversy in such a case in one suit is fully recognized by the authorities. 1st Story's Equity Jurisprudence, secs. 461 to 465.

2. The further contention of the defendants is that as none of the specifics described and enumerated in the list given by Tracy to Silas Turner ever came *nominatim* into the hands of his executors, therefore no decree can pass in respect to those specifics or their value in the present case, as against the estate of a culpable trustee. But the present suit is not brought to recover the specific bonds or properties named in the list, as in an action of replevin or trover; but to compel an accounting by the executors, of their testator's dealings with the funds, in which they may be charged with the value of the property so held by Tracy which has not been properly accounted for by him or by his estate; and be credited with all proper payments made by Tracy to persons justly entitled to receive them.

3. The most serious defense on the part of the defendants is based on the contention that, with the exception of a comparatively small amount, the entire properties belonging to Silas Turner at the time of his death which were in Tracy's possession were paid over by him to Thomas M. Turner, the brother of Silas and father of the four complainants; and that the said Thomas was fully entitled to receive and execute a legal acquittance for them to Tracy. Tracy's right to turn over these specifics to Thomas Turner is
54 denied by the complainants, but is maintained by the defendants upon several grounds.

On behalf of the defendants it is insisted that under the law of Louisiana, where Thomas M. Turner was residing with his minor children at the time of his brother's death, the right to receive and receipt for the money belonged to him "as natural tutor and agent of his minor children;" and this contention has been the subject of a large part of the arguments presented by the opposing counsel.

After a careful consideration of this contention, I have arrived at the conclusion that Thomas Turner had no such right or power under the law of the State of Louisiana as is contended for by the defendants. Conceding the law of Louisiana could control the lawful distribution of the estate of Silas Turner (who was domiciled in Virginia when he died, never had any property relations with and never held any property within the State of Louisiana; but all he owned was situated either at the place of his domicile or in the District of Columbia), yet none of the essential, precedent steps pointed out by the statutes of Louisiana as to what are denominated *usufructuary interests of parents* in the property of their minor children, were taken, either by the prescribed summons or by the requisite inventory or appraisement. Nor is there anything to show that any of the subsequent forms and manner of procedure required by the statute of Louisiana, which contemplates a contestation of the claims of the father presented in behalf of the children, were attempted to be pursued by Thomas Turner in that State.

If, according to these laws, such provisions were considered important to the protection of minor children where the property should be located within the State of Louisiana, *a multo*
55 *fortiori* should their observance be held essential with respect to property in a foreign jurisdiction which had never come within the cognizance of the courts of the State. If these safeguards could thus be disregarded, the property of minors could be seized by the father under the pretext of tutorship, and their ruin be accomplished without the pretext of any form of securityship or other indemnification against spoliation. To apply such principles under these circumstances of neglect would be truly *agnem committere lupo.*

4. But, in my opinion, the laws of Louisiana on the subject of tutorship can have no extraterritorial effect, and therefore can have nothing to do with the matter in hand. 45 La. Ann. 737. Morse, tutor, &c. As Silas Turner held no property situated in Louisiana, he was under no obligation to the laws of that State, which had no more

authority to administer his Virginia estate than the courts of the State of Mississippi or Texas. The domicile of Thomas Turner was the locality where his personal property should have been administered, according to the laws both in Virginia and the District of Columbia, where some of the debtors resided. That no title passes to personalty except through the interposition of administration is undoubtedly the general law; and the afflux of time cannot render nugatory the necessity of compliance with the requirement of administration. Fishwick *vs.* Sewall, 4 Harris and Johnson, 393. Wilson, adm'r *vs.* Smith, 10th Maryland, 67.

But Tracy took no step to secure the appointment of an administrator in Virginia, nor in the District of Columbia; and if he had attempted to procure such an appointment in either jurisdiction, he must have been admonished by the terms of the
56
will, as well as by his own knowledge of the relations of the two brothers, that Thomas Turner was the last person whose appointment the testator would have desired; since he had been at pains to require Tracy, when drawing the will, to exclude Thomas from the management of his property; and had informed him (Tracy) that the reason for the exclusion was the spendthrift character of Thomas Turner.

Not only so, but the testator, most effectually to accomplish this exclusion (as he must have supposed), had placed in the hands of Tracy the absolute power to prevent Thomas from handling a dollar of the money which he had resolved to give to his nephew and nieces, by appointing Tracy himself "to distribute the proceeds of the property equally between them."

Tracy had omitted to designate himself or any one else in the will as executor; but he had the right to apply to the appropriate court of probate for the appointment of an administrator *cum testamento annexo;* and he could scarcely have referred to his pecuniary incapacity when he said, in his "instructions to executors," that he could not qualify; as appears from the very considerable amount of the inventory of his estate exhibited in the cause; and no good reason appears why he would not have been appointed if the matter had been brought to the attention of the court, or why one of the relatives or some other person would not have been selected upon whom would devolve the legal title of the estate subject to the disposition of the will.

57 If, besides neglecting his obvious duty to supply his own omission from the will in this particular, he had desired to rid himself of the authority and duty devolved upon him by the will to make distribution of the proceeds, his obvious course would have been to resign the trust, and apply to a competent court to appoint another to perform the duty in his stead; and this the court would have done without hesitation, as equity would never allow a trust to fail for lack of a trustee. But Tracy did neither of these things, but neglected his plain duty, and proceeded to repudiate the wishes of his testator and practically to repeal his will, by turning over almost the entire property to the person whom he knew the testator would

most strongly refuse to entrust with its administration, and who, as Tracy says in the instructions, could not have given the bond required by law.

If the officers of the law would not have trusted Thomas Turner because of his impecunious condition, upon what principle could Tracy have confided to him the entire earnings of his testator's life, in open contempt of the testator's warnings when about to make the will, of the words of the will itself, and of his own knowledge of Thomas Turner's unsuitable character to receive the trust?

In attempted justification of Tracy's conduct it is urged by the defendants, and much stress is laid upon the fact, that the person to whom the payment was made was the father of the beneficiaries. That this contention is not sufficient as a justification for a- illegal payment of the children's money is abundantly shown by the authorities, from the early case in 1. P. Wms. Dagley *vs.* Tolferry, 285, and upon the grounds explained in 10th Yerger, 10, Miles
58 *vs.* Kaigler:

"The reason and justice of the rule is obvious. The infant has not discretion to protect his own rights, and his father may be totally unworthy of trust and confidence; and there is no security for his ultimate responsibility."

Unless this view were respected by the courts, it would be quite useless for a testator to attempt any precautions whatever in his will with the view of securing the payment of his estate to minor children, since whatever safeguards he might adopt for this purpose could equally well be brushed aside by one resolved to neglect the testator's instructions as idle words. But the courts have continued to maintain this position. Thus, in 95 Illinois, 519, Parry *vs.* Carmichael, an administrator of a married woman had recovered judgment against a railroad company for damages to the deceased. The father, to whom part of the judgment was payable under the law, had received the entire money, including the residue which was payable to the minors, upon a release executed to the company by the administrator, who really received none of the money. The father had never been appointed guardian of the children; and upon his failure to account to them they filed a bill against the administrator as a defaulting trustee, claiming their share of the funds. The court sustained the bill, holding that the money was a trust fund; that the payment to the father did not discharge the administrator from responsibility, as the father had no control of his children's estate without an appointment as guardian; and that the administrator who had permitted the funds to be received by the father could not himself be relieved from ultimate responsibility, although
59 he himself had received no part of the money. See, also,
155 Massachusetts, 111, Tripp *vs.* Gifford, 170 Illinois, 610, Railway Company *vs.* Haley.

Nonfeasance equally with misfeasance may furnish a ground of action in a court of equity against a neglectful trustee.

5. But the defendants further contend that Thomas Turner from time to time applied large parts of what he had received from Tracy

for the benefit of his children, and that these payments should be accepted as a further credit to the defendants, if not in full acquittance.

Of course it would be but equitable, *it if* were clearly established in a cause that a father had actually paid over the money he received to a person legally entitled to represent the minors, to decree him an acquittance in a suit in their behalf to the extent thus paid; for there could be no justification for allowing the children's money practically to be paid to them twice. But whether the same result would occur where the father himself, acting without any legal authority as guardian, attempts to exonerate himself from his natural duty in supporting his children, and compel his children, without their knowledge or consent, and without the power on their part to give such consent, practically to support him by allowing him to pay them money which by law he is required to pay out of his own funds, may present very different propositions, depending upon a variety of circumstances.

The natural obligation of the father to support and educate his minor children from his own estate is undoubted, and one from which he can no more free himself, as a general principle, than he can get rid of his shadow, notwithstanding the children
60 themselves may be the owners of property in their own
right. The obligation does not exist if the father has no property, or has not a sufficient amount to support the children. In either event it becomes the duty of the proper court, upon a due showing, to decide what part of the child's property may be allowed to the father for that purpose. But the father himself, no more than a stranger, can decide upon the proper *quantum* to be allowed for the support of the children. So, if the income of the father is sufficient for a moderate support of the children, and they are the owners of an estate very much larger, an allowance may be made out of their estate of a sum liberal enough to allow them to live in accordance with their present income and their prospective condition in life.

But before an allowance of either description will be made by the court, it will be requisite that the guardian, under bond to protect their property, whether he be their father or some one not related to them, shall in the one case establish his entire inability to support them from his own property; or, in the other, shall show to the court, by clear and satisfactory testimony, the propriety of a more liberal allowance out of their own estate.

This is the familiar principle adopted in this class of cases by our own courts, which is in conformity with the decisions of well-considered cases. In 43 West Virginia, 711, Windon *vs.* Stewart, the court, in a case of the first description, refused to make an allowance to the father out of the child's estate, and said:

"The law as well as affection put on him the burden of supporting his child, even though she had an estate."

In a case of the second kind, Tompkins *vs.* Tompkins,
61 exec., 18th New Jersey, Equity 303, the court said:

"The settled rule with regard to the support of infants is that if their father is still living, and is of sufficient ability, he is bound to support them, notwithstanding they have estates of their own, even when such estates have been given them expressly for their maintenance; but when the father is not of sufficient ability to support them, or to support them according to their situation and expectations, the courts will allow so much of their own income to be applied to the purpose as is necessary."

But the court adds that the fact of the father's ability must be inquired into and determined by the court; that the admissions of the children are not sufficient, since they must be considered as too young to have any discretion in the matter, and that a reference should be made to a master to report all the circumstances.

See, also, 5 Rawle 323, matter of Harlan; 64 Hun. Foley *vs.* Insurance Company, page 63; and 138 New York, 333, *idem;* approved on appeal in 1893, where the whole subject is fully discussed.

Applying these principles to the case in hand, it would be obviously improper to adopt the mere statements of Thomas Turner that he expended the money for the support of his children, or made investments of it in a way that he supposed would be beneficial, to them. As he held no official relation to the children or their property, and had no peculiar right over the property growing out of his relation as father, his discretion not guided by the court as to the extent of the allowance requisite, or as to the wisdom of any
such invesrment, cannot be considered as binding the infants.
62 This would be to make an unofficial person practically the
sole proprietor of the estate. If he had been appointed guardian by a competent court, still then he must act within the order of the court; and any expenditures made by him without or beyond the express authority of the court would be disallowed. 12th Gill & Johnson, 108, Hatton *vs.* Weems. Of course such expenditures by him in an individual capacity and acting merely in his personal character and without any order of court, could not be allowed.

But even in the case of a father acting under an appointment from the court, the law is clear that where he seeks the assistance of the court for the support and education of his children out of their estate, it must first be established by clear and satisfactory proof that he is not able to support them.

There is testimony in the case bearing on these points; but it certainly does not rise to the degree of clear and satisfactory proof required by the courts. Since the case must in any event be referred to the auditor for an accounting, I shall authorize him to take further testimony, as the parties may desire, to state an account from the entire testimony. as to the correctness of the allegation that the money received by Thomas Turner from Tracy was expended for the benefit of his children, and that the expenditure was a reasonable one for the children under the circumstances, and that he himself was unable to support his children from his own means. It may be that upon the testimony, when completed, there may arise circumstances which may justify the court in decreeing that

the complainants have already had all practical benefit of the estate that they are now claiming; and if such a state of case shall
63 be presented, the court may be able to exonerate the estate of Tracy from a large part of the liability to which it should be subjected in the absence of such showing. On such an accounting the defendant should be entitled to credit for the sums which it appears were paid at various times by Tracy in his lifetime to Erle Turner, the oldest of the complainants, after he had attained his majority, and which by Tracy's admission were in discharge of other portions of the estate in Tracy's hands which he had not delivered to Thomas Turner.

6. The further objection by the defense that there can be no recovery in the case because of the laches of the complainant, I think is not tenable. We know that this defense is admitted by the courts of equity upon no definite rule, but the action of the court in considering it is based upon the facts and circumstances in each particular case. There could be no pretense here that the two children who were minors when the bill was filed, and one of whom is still a minor, can be barred of their claim by the application of this defense of laches; nor is there, in my judgment, anything in the case to justify the interposition of that defense to the claim made by Wilmer Turner, the second child. With respect to Erle, the eldest, there is more ground for admitting the objection, though as the case now stands I am not at all satisfied that the court should do so.

The counsel for the complainants may prepare a decree referring the case to the auditor to state an account of and concerning the moneys and property received by Tracy from Silas Turner, based upon the testimony in the case and further evidence which
64 he will be authorized by the decree to take, upon the principles expressed in these remarks.

A. B. HAGNER.

Order Authorizing Payment of Syndicate Assessments.

Filed October 15, 1902.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL. *vs.* JOSEPH J. DARLINGTON ET AL., Executors.	No. 20552. Equity.

Upon consideration of the petition of George W. Gray and Joseph J. Darlington, executors, for instructions in regard to the two assessments against Philip A. Tracy, their testator, as the owner of a one-tenth share in a syndicate owning square No. 649, in the city of Washington, in the District of Columbia, and of the consent by the solicitors for the parties to the above suit, it is by the court this 15 day of October, A. D. 1902, ordered that the said executors be, and they thereby are, authorized and directed to pay to William E. Edmonston, the trustee representing the said syndicate, the sum of two hundred dollars ($200.) paying the assessments against the estate of the said Philip A. Tracy set forth in their said petition.

A. B. HAGNER,
Asso. Justice.

65 *Appeal.*

Filed October 29, 1902.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER, WILMER TURNER, ASHBY Turner, and Lunette Turner, by Wilmer Turner, Next Friend, Complainants, *vs.* JOSEPH J. DARLINGTON and GEORGE W. Gray, Executors of Philip A. Tracy, Deceased, Defendants.	In Equity. No. 20552.

Now come the defendants, Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, by their solicitors, and appeal to the Court of Appeals of the District of Columbia from the decree entered in the above-entitled cause on the tenth day of October, A. D. 1902.

NATH'L. WILSON,
CLARENCE R. WILSON,
Solicitors for the Defendants.

66 In the Supreme Court of the District of Columbia.

ERLE H. TURNER, WILMER TURNER, ASHBY Turner, and Lunette Turner, by Wilmer Turner, Next Friend, *vs.* JOSEPH J. DARLINGTON and GEORGE W. Gray, Executors of Philip A. Tracy, Deceased.	No. 20552. In Equity.

The President of the United States to Erle H. Turner, Wilmer Turner, Ashby Turner, and Lunette Turner, by Wilmer Turner, next friend, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant to an appeal taken in the supreme court of the District of Columbia, on the — day of October, 1902, wherein Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this — day of October, in the year of our Lord one thousand nine hundred and two (1902).

JOHN R. YOUNG, *Clerk*.

Service of the above citation accepted this 29 day of October, 1902.

W. G. JOHNSON,
Attorney for Appellees.

[Endorsed:] No. 20552. Equity. Erle H. Turner, Wilmer Turner, Ashby Turner, and Lunette Turner, by Wilmer Turner, next friend, *vs.* Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased. Citation. Issued October —, 1902. Nath'l Wilson, Clarence R. Wilson, attorneys for appellant-.

67 *Notice to Clerk for Preparation of Record on Appeal.*

Filed October 29, 1902.

In the Supreme Court of the District of Columbia.

Erle H. Turner, Wilmer Turner, Ashby Turner, and Lunette Turner, by Wilmer Turner, Next Friend, Complainants,
vs.
Joseph J. Darlington and George W. Gray, Executors of Philip A. Tracy, Deceased, Defendants.
} In Equity. No. 20552.

To the clerk of the supreme court of the District of Columbia:

An appeal having been taken in the above-entitled cause to the Court of Appeals from the decree entered on the 10th day of October, 1902, the clerk will please prepare the record for transmission to the Court of Appeals, which record is to consist of all the pleadings, testimony, exhibits and decree.

NATH'L WILSON,
CLARENCE R. WILSON,
Solicitors for Defendants.

Memorandum.

October 29, 1902.—Appeal bond filed.

68 *Stipulation of Counsel, &c.*

Filed October 29, 1902.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

ERLE H. TURNER ET ALS., Complainants,
vs.
JOSEPH J. DARLINGTON and GEORGE W. Gray, Defendants.
} In Equity. No. 20552.

It is hereby stipulated and agreed that the appeal taken to the Court of Appeals of the District of Columbia by the defendants in the above-entitled cause from the decree entered on the 10th day of October, 1902, by the supreme court of the District of Columbia, sitting in equity, shall not be heard in said Court of Appeals until the appeal that shall be taken from the decree to be entered upon the coming in of the auditor's report on the reference made to the auditor in and by the aforesaid decree shall be heard; also that the transcript of the record on said first appeal and the transcript of the record of the proceedings since said appeal shall together constitute the record on said last appeal; and further that request shall be made to said Court of Appeals to pass such order as may be necessary to carry into effect this agreement, and to secure the hearing by said court upon a complete record of the appeal from said decree of October 10th, 1902, and from the decree that shall be entered upon and in respect of the auditor's report by the said supreme court of the District of Columbia.

October 29, 1902.

W. G. JOHNSON,
Sol'r for Compl'ts.
NATH'L WILSON,
CLARENCE R. WILSON,
Sol'rs for Def'ts.

Complainants' Depositions.

Filed March 28, 1902.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL. *vs.* J. DARLINGTON and GEORGE W. GRAY, Executors.	In Equity. No. 20552.

WASHINGTON, D. C.,
THURSDAY, *May 16th*, 1901—11 o'clock a. m.

Met pursuant to agreement at the office of Carlisle & Johnson, endall building, Washington, D. C.

Present on behalf of the complainants, Messrs. Carlisle & Johnson.

Present on behalf of the defendants, Messrs. Nathaniel Wilson d Clarence Rich Wilson.

Present also, George W. Gray, Esq., one of the defendants, and ilmer Turner, one of the complainants.

Miss WILMER TURNER, one of the complainants, a witness of lawl age, called by and on behalf of the complainants, having been rst duly sworn, testified as follows:

By Mr. JOHNSON:

Q. Miss Turner, I wish you would state your full name. A. ilmer Turner.

Q. Where do you reside at present? A. I am staying in Washington at present.

Q. Are you the lady described as a complainant in this suit? A. I am.

Q. What is your father's name? A. Thomas Minor Turner.

Q. What is your mother's name? A. Carrie Heath.

Q. That was her maiden name? A. Yes.

Q. Are they still living? A. Yes.

Q. Can you state what is your birthday? When were you born? . On the 11th of October.

Q. What year? A. 1875.

Q. Where were you born? A. In Minden, Louisiana.

Q. How long did you live there? What year did you leave? . In the summer of 1889 we left.

Q. Do you know in what month? A. I think in August.

Q. Did your father and mother and the rest of the family live ere during that time? A. Yes.

Q. Did your father occupy any official position during any of the me that you remember? A. Yes.

Q. What was it? A. As a child I remember he was always in e court-house.

71 Q. Employed there? A. Employed, yes—always as long as I could remember.

Q. Was he up to the time he left? A. Yes.

Q. When you left Minden where did the family go? A. To Texas.

Q. Do you remember at what place they first stopped?. A. Yes; at Ennis, in Ellis county.

Q. About how long did they remain there? A. We were there until December of the same year.

Q. By "we" whom do you mean? A. My mother, my younger brother and sister and myself.

Q. What was that younger brother's name? A. Ashby.

Q. What was your sister's name? A. Lunette.

Q. What became of your elder brother and your father? A. They went to Vernon, Texas.

Q. What was the elder brother's name? A. Erle.

Q. Did you and your mother and the other children ever go to Vernon? A. Yes; we went to Vernon in December, 1889.

Q. When did you leave there? A. In June of the following year.

Q. June of 1890? A. 1890; yes.

Q. Who went with you? A. The family, except Erle.

72 Q. All but Erle? A. Yes; he remained in Vernon.

Q. Where did you go from Vernon? A. We came to Virginia, to Clark county.

Q. How long did you stay out there? A. Well, I was visiting cousins that summer until September, part of the time in Clark county and part of the time in Fauquier.

Q. What I want to know is when if at all, you went back to Texas. A. I did not return to Texas until 1895.

Q. Did your mother and the other children return before then? A. Yes; they returned in the winter of 1894, January.

Q. Do you know of your father having returned before? A. Yes; my father returned in the fall of 1890.

Q. Do you know how long he stayed? Was it a matter of days or weeks or months? A. Months I think.

Q. Some months? A. Yes; I can't remember.

Q. You remained in Virginia, you say, until 1895. How were you occupied? A. In the fall of 1890 I was put at Hollins' Institute, at school.

Q. Well? A. Shall I tell you where I stayed in the summer?

Q. No; I say how were you occupied during the time?

73 A. I was at school, in 1890, the first year. In 1891 I went to Kleinberg school and remained there three years. In the fall of 1894 I began teaching.

Q. Was that teaching in a school or in a private family? A. It was at Kleinberg school, where I had been three years.

Q. Then how long were you there teaching? A. I taught one session, and then in June 1895 I went to Texas.

Q. When did you leave Texas? A. In September, 1896.

Q. And where did you go? A. I came back to Virginia.

Q. And how were you occupied there? A. I taught in a private family.

Q. When did you come to Washington to stay any time? A. Why, I came last fall, in September.

Q. Last September? A. Yes.

Q. How were you occupied between the fall of 1896 and last fall, when you came to Washington? A. I was teaching all the time.

Q. Were you teaching schools or private families? A. In private families.

Q. I will have to ask you to state what compensation you were earning?

Mr. Wilson: I note an objection to that as immaterial and irrelevant.

74 A. From 1896, do you want?

Q. Yes. A. In 1896 I received $100 a year.

Q. Was that in addition to your board and lodging? A. Yes.

Q. Or exclusive? A. In addition to it.

Q. What did you receive the next year? A. The next year I received $125.

Q. And the next? A. The next, $145.

Q. What was the highest compensation you received any year? A. $175.

Q. What year was that? A. In the session of 1899—the fall of 1899.

Q. With whom were you teaching then? A. Mrs. Hutton.

Q. Where was that? A. In Huttonsville, West Virginia.

Mr. Wilson: I note an objection to all the foregoing questions and answers thereto in respect of compensation earned by or paid to the witness.

By Mr. Johnson:

Q. During that time, did you have any financial aid or assistance from any source? A. No. On the other hand, I helped my brother, who was at school, one year.

Q. Out of what you were earning? A. Yes; out of what I was earning.

75 Q. Did you ever see Philip A. Tracy? A. No.

Q. Did he ever give you any money at any time? A. No.

Q. Did you ever ask him for any money? A. No.

Q. Did you ever receive any letter by the mail purporting to come from him? A. Yes.

Q. More than one? A. Yes; I received two.

Q. I hand you a letter dated Washington, D. C., June 7, 1895, and ask you to state whether or not that is one of the letters? A. Yes; that is one I received.

(The said letter was marked "Exhibit Miss Turner No. 1.")

By Mr Johnson:

Q. Have you any knowledge of Mr. Tracy's handwriting? Did you ever see him write? A. No, except from his letter.

Q. But you have no other knowledge than receiving this letter? A. No.

Q. This letter makes reference to a Mr. Watson, the agent of the Chesapeake & Ohio railroad, and states that he will furnish you a ticket from Charlottesville to St. Louis. Did you communicate with Mr. Watson? A. Yes.

76 Q. In what way? A. I wrote to him.

Q. Did you receive any reply? A. Yes.

Q. In what way? A. He wrote that——

Q. You say he wrote. Have you the letter he wrote to you? A. No.

Q. What became of it? A. Why, I destroyed it.

Q. Can you state the substance of the letter?

Mr. Wilson: I object to the questions and to the answers that have been given concerning communications with Mr. Watson, as immaterial and irrelevant.

A. He wrote that I might either call at his office and get the ticket, or that he would meet me at the depot with it.

Q. Did you in fact get the ticket? A. I did.

Q. From Mr. Watson? A. No; Mr. Watson could not meet me at the depot, and he sent a young man down with it.

Q. Did you pay anything for that ticket? A. No, I did not.

Q. What transportation did it cover? A. From Charlottesville to St. Louis.

Q. Did you or not get the sleeping-car berth? A. Yes.

77 Q. Did you pay anything for that? A. No.

Mr. Johnson: Now I offer this letter in evidence.

Mr. Wilson: I object to the letter as immaterial and inadmissible.

For Ex. Miss Turner No. 1, see page 416.

(The above-mentioned letter, marked "Exhibit Miss Turner No. 1" is filed herewith.)

By Mr. Johnson:

Q. Did you ever write to Mr. Philip A. Tracy? A. Yes. I wrote to thank him for the ticket, and then I wrote again.

Q. Did you ask him for the ticket? A. No.

Q. Do you know of any one who did? A. No.

Q. Do you know how he came to write that letter to you? A. My mother wrote me that she had written to him and asked if he could get an excursion ticket.

Q. That is what you know of it, then, from your mother? A. Yes; that is all

Q. You have no knowledge of your own? A. No.

Q. You say you wrote a second letter to him? A. Yes.

Q. Did you receive any reply to it? A. Yes.

Mr. WILSON: I object to that question. I do not understand that she said she wrote a second letter.

78 Mr. JOHNSON: Yes; she said she wrote one letter thanking him for the ticket and that then she wrote to him again.

By Mr. JOHNSON:

Q. Look at this paper which I now hand you and see if that is the reply you received? A. Yes.

Exhibit Miss Turner No. 2, see page 417.

(The above letter was offered in evidence by counsel for the complainant, and is filed herewith, marked "Exhibit Miss Turner No. 2.")

Mr. WILSON: I object to all the foregoing questions in regard to the correspondence, and to this letter, as irrelevant and immaterial.

By Mr. JOHNSON:

Q. Do you remember the circumstances of the death of your uncle, Silas H. Turner? A. Yes; I remember.

Q. I will ask you to state whether or not at or about the time of his death your father left Louisiana? A. Yes; he left before his death.

Q. And when did he return to Minden? A. In December 1888, after his death.

Q. Do you remember the date of your uncle's death? A. No.

Q. Do you know the month? A. September.

Mr. WILSON: He returned in December, and your uncle died in September. Is that it?

A. Yes.

By Mr. JOHNSON:

Q. About how long before your uncle's death was it he left Minden? A. He left in August.

79 Q. And returned in December? A. Yes.

Q. When you and your family lived in Minden, did you live in a rented house or a house that belonged to any member of the family? A. It was a home of our own.

Q. To whom did it belong? A. To my mother.

Q. Was that home sold before you left to go to Texas? A. No.

Q. Was it in the town or outside? A. Outside the town.

Q. What parish of the State is Minden in? A. Webster parish.

Q. Did you ever see the original will of your uncle, Silas H. Turner? A. No.

Q. I wish you to state now when and from whom you first learned to whom that will gave his property? A. I learned it from my mother.

Q. Was that in conversation, or by letter? A. In conversation.

Q. State when and where. A. Not earlier than the summer of 1893. I rather think it was in the summer of 1895, in Vernon, Texas, or in 1893, in Alderson, West Virginia.

Q. You were in Alderson, West Virginia in 1893? A. Yes.

Q. And it was either in the summer of 1893, in Alderson, West Virginia, or in the summer of 1895, in Vernon, Texas, that
80 you learned it? A. Yes, sir.

Q. From your mother? A. Yes.

Q. What was the first time that you ever had a conversation with your father with reference to Silas Turner's estate? A. The first and only time was September, 1896, in Vernon, Texas.

Q. What was the occasion of that conversation? A. It was just a few days before I was to leave home to teach.

Q. Where were you going? A. To Virginia.

Q. Had your place there been engaged, in Virginia? A. Yes.

Q. With whom was it? A. Mrs. Foster.

Q. At what point in Virginia? A. Nelson county. Schuyler is the post-office.

Q. What compensation were you to receive? A. $100.

Q. Do you know how far that was from Vernon, Texas? A. No, I do not.

Q. State as nearly as you can what your father said to you.

Mr. Wilson: I object to that as incompetent and as immaterial.

A. To the best of my recollection he said he did not want me to teach. He hated to see me leave home and have to teach, and then he told me that Mr. Tracy had not acted right and there had been some substitution of notes.

81 Q. Did he tell you anything farther? A. No; I don't remember anything further.

Q. Did you ask him any question? A. No.

Q. I will ask you to state whether or not at any time before that he had ever spoken to you on the subject, or you to him? A. No, never.

Q. State whether or not at any time after that, and before this suit was brought, you saw your father? A. No.

Q. When was the next time you saw him after September, 1896? A. Last week.

Q. In the city? A. Yes.

Q. Do you remember the day of the week? A. Saturday morning.

Q. Before this suit was brought and after September, 1896, did he ever write you anything on the subject? A. No.

Q. Did you ever write anything to him about it? A. No.

Q. I show you a letter dated Washington, D. C., May 29, 1895, purporting to be signed by Philip A. Tracy, and ask you to state from whom you received it. A. From my mother.

Q. Did she give it to you in person, or send it to you? A. She sent it to me.

82 Q. Was that before or after the beginning of this suit? A. Afterwards.

"Exhibit Miss Turner No. 3," see page 318.
(The said letter was marked "Exhibit Miss Turner No. 3.")

Q. Miss Turner, I show you a letter dated Washington, January 25th, 1895, purporting to be signed by Philip A. Tracy, and ask you to state from whom you received that. A. From my mother.

"Exhibit Miss Turner No. 4," see page 419.

(The above-mentioned paper was marked for identification, "Exhibit Miss Turner No. 4.")

Q. Miss Turner, I show you a letter dated Washington, D. C., August 21st, 1894, purporting to be signed by Philip A. Tracy, and an envelope addressed to "Mrs. T. M. Turner, Vernon, Texas, postmarked, "Washington, D. C., August 21, 7 p. m., 1894," and ask you from whom you received that? A. From my mother.

Q. Was it given you or sent you by mail? A. It was sent to me by mail.

"Exhibit Miss Turner No. 5," see page 421. "Exhibit Miss Turner No. 5*a*," see page 422.

(The above-mentioned letter and envelope were marked, for identification, "Exhibit Miss Turner 5" and "Exhibit Miss Turner 5*a*," respectively.)

Q. Miss Turner, on the back of the second sheet of the letter dated August 21st, 1894, is some writing in lead pencil. I will ask you to please look at it and to state if you know in whose 83 handwriting it is. A. My mother's.

Q. You mean that is her writing? A. Yes. Then this is mine, in parenthesis.

Q. The words in parenthesis? A. Yes; my mother wrote this (indicating).

(The cross-examination of Miss Turner is, by request of N. Wilson, Esq., postponed until after the examination of Mr. Thomas N. Turner.)

Miss Wilmer Turner withdraws.

84 ERLE H. TURNER, a witness of lawful age, one of the complainants, a witness called by and on behalf of the complainants, having been first duly sworn, testified as follows:

By Mr. JOHNSON:

Q. Mr. Turner, you are one of the complainants in this suit? A. Yes, sir.

Q. Where do you reside? A. In Philadelphia.

Q. You are the brother of Miss Wilmer Turner who has been testifying this morning? A. Yes, sir.

Q. Where were you born? A. Minden, Louisiana.

Q. Do you recall the circumstances of the family moving away from there? A. Yes.

Q. Can you state the year and month? A. It was the year after my uncle died.

Q. In what year did he die? A. I cannot remember dates.

Q. All right. Did you accompany the family? A. As far as Ennis, Texas.

Q. From where did you go? A. I went to Vernon with my father.

Q. How long did you remain there in Vernon? A. Almost two years.

Q. Do you remember what month you left? A. I think it was in March or April—the latter part of March or up to the middle of April.

85 Q. Do you remember the year? A. I have not got those dates in my head. I can refer to letters in a minute and tell.

Q. Where did you come with him? A. When we left Vernon?

Q. Yes. A. Why, I didn't come anywhere with him. He was in Virginia, and I left Vernon and came to Virginia myself.

Q. And joined him? A. Yes, sir.

Q. Then where did you go from there? A. He came to Washington with me.

Q. Whereabouts in Virginia did you join your father? A. I think it was a little place called Waynesboro.

Q. Do you remember what railroad it was on? A. Well, at the junction of the C. & O. and the Norfolk & Western there are two little towns. They are both built together, and I don't remember which it was in; but it is——

Q. Is one of them Basic City? A. Yes; that was it. Waynesboro was the place, I know now, and Basic City is the other one. I don't know which road you would consider it on.

Q. Now, how were you occupied in Texas? A. Farming or opening a farm, I should have said.

Q. Was that in or near Vernon? A. About nine miles from Vernon.

Q. What kind of farming was it? A. Wheat farming.

Q. Was that under any arrangement with anybody? A. With my father.

86 Q. What was the arrangement with him? A. Well, he bought this place, and I was to open it up. You see it was what you might call unsettled then; and I was to open it up and put it in wheat, and we were to divide the profits.

Q. Did you prosecute that work up to the time that you left? A. Yes, sir; and I also attended to his business in town. He was having a house built there.

Q. Was the place in which you lived in Minden a farm or a town place? A. Why, what you would consider the town there, or the corporation, extends a mile each way from the court-house; and this was in the corporation. While it was not in the town you know, I suppose it was under city jurisdiction, or would be considered so. This was 160 acres in the corporation; and the corporation is four square miles, if I am not mistaken.

Q. Was it used for farming purposes? A. For a home and farm. It was considered a country home, a country house.

Q. Do you remember the circumstances of your uncle's death? A. Yes, sir.

Q. Do you recall whether your father was in Louisiana or not at the time? A. He was in Virginia.

Q. Do you remember his returning after your uncle's death? A. Yes, sir.

87 Q. Before he returned did you hear from him, directly or indirectly, in any way? A. I don't think I had a letter from him. Well, I heard from him through my mother's letters. I don't remember whether I had any myself or not; but I heard from him through letters to my mother, letters that he had written to my mother.

Q. Did he give you any information in any letter to your mother that you saw or heard read as to how your uncle had left his estate? A. Yes sir.

Q. Did you see that letter, or read it or hear it read? A. I don't remember whether I heard it read or not. I read it myself. I might have heard it read.

Q. Do you know anything about the whereabouts of that letter? A. No, sir.

Q. I will ask you to state what information your father gave as to how your uncle had left his estate.

Mr. Wilson: I object to that as immaterial and incompetent.

A. He said he had left it to my father.

Q. Did you ever see Philip A. Tracy? A. Yes, sir.

Q. Where did you meet him? A. The first time?

Q. Yes. A. In the National hotel, Washington city.

Q. Do you recall through whom you were introduced to him? A. My father.

88 Q. Did you continue to know him after that? Did you see anything of him after that? A. Yes, sir.

Q. Where did you see him? A. In Washington and Philadelphia, and perhaps Baltimore. I am not sure about Baltimore.

Q. Did you ever see him write? A. You mean did I ever see him in the act of writing?

Q. Yes. A. Yes.

Q. Did you ever correspond with him? A. Yes, sir.

Q. Did you receive letters from him? A. Yes, sir; a great many.

Q. I ask you to look at this letter, dated May 29th 1895, marked "Exhibit Miss Turner No. 3," and state whether or not that is his writing, in your opinion? A. Yes, sir.

Mr. Johnson: I offer that in evidence, Mr. Wilson. It will be subject to your objection, of course.

By Mr. Johnson:

Q. Look at the letter dated January 25th, 1895, marked "Exhibit Miss Turner No. 4," and state whether or not the signature to that is in Mr. Tracy's handwriting? A. It is.

Mr. Johnson: I now offer that in evidence.

By Mr. **Johnson**:

89 Q. Look at the letter dated August 21st, 1894, marked "Exhibit Miss Turner No. 5," and state whether or not the signature "Philip A. Tracy" is in his handwriting or not? A. It is.

Q. I wish you would look at the writing in lead pencil on the same page with the signature "Philip A. Tracy," and state in whose handwriting that is. A. Mr. Tracy's.

Mr. **Johnson**: Now I offer that in evidence.

(The three papers above mentioned, which have been previously marked for identification as indicated in the questions referring to them, are filed herewith.)

Mr. **Wilson**: I object to the admission in evidence of Exhibits 3, 4, and 5 on the ground of being immaterial and irrelevant.

(At this point a recess was taken until 1.30 o'clock, p. m.)

After recess.

Erle H. Turner the witness under examination when the recess was taken, was recalled, and his direct examination continued, as follows:

By Mr. **Johnson**:

Q. Mr. Turner, when you came to Washington after leaving Texas, you stated that you went to Philadelphia? A. Yes, sir.

90 Q. When was the next time you saw your father? A. About two years later; I saw him in Virginia.

Q. Do you remember what part of Virginia? A. In the western part of the State. I had gone down to see mother, and he was there. He had come up to see her.

Q. How long did you remain there? A. Just a little while.

Q. What do you mean by "a little while"? A. Ten days or two weeks.

Q. When was it that you came to Washington from Texas? What year? A. In the spring of 1891.

Q. When did you next see him after meeting him in Virginia that time? A. In Texas.

Q. How long was that after your visit to Virginia? A. The same fall.

Q. That would be the fall of 1893? A. Yes, sir.

Q. When did you next see him? A. Here, last Tuesday night.

Q. Of the present week? A. Yes, sir.

Q. Now I want you to state whether at any time after your uncle's death and prior to last Tuesday night you had any conversation with your father with reference to your uncle Silas Turner's estate? A. I did not.

91 Q. Did he ever make any written communication to you with reference to the estate? A. Yes, sir.

Q. Can you state whether that was before or after you came to Philadelphia from Texas? A. It was shortly after.

Q. Can you give the date? A. It was shortly after April, 1891, when I came to Washington.

Q. I say, can you give the date? A. No, sir; I cannot.

Q. Can you state whether it was more or less than a year? A. It was less than a year.

Q. Was that communication a letter? A. It was an order on Philip A. Tracey to pay me so much money.

Q. Was there any letter? A. There might have been. I do not remember. I suppose there was something asking me if I could collect it, or something like that, I think. I do not remember anything about the letter.

Q. Do you know what became of that order? A. I lost it.

Q. Was there anything else besides the order? A. There was an acknowledgment in Tracy's handwriting. I lost that with the other.

Q. Do you know what the substance of that was? A. Of Tracy's handwriting?

Q. Yes. A. Why, it was just to certify that there had been so
much money of Silas H. Turner's estate invested in lots on
92 Maryland avenue. That is my memory of it.

Q. Did it state how much? A. $2500, I think. That was the original investment, and the order called for more.

Q. Can you state the date of that order? A. I received it some time after April, 1891.

Q. Can you not get any nearer to it than that? A. I think within a year; it might have been a good deal less than that; and I gave Mr. Tracy a copy of the order.

Q. Did you show him the original? A. Yes, sir; both papers—the order and the one in his handwriting.

Q. Did you ever see the original will of your uncle? A. I did not.

Q. From whom did you first learn that your uncle left his estate to you children and not to your father?

Mr. Wilson: Objected to as leading.

A. Tracy.

Q. Philip A. Tracy? A. Yes, sir.

Q. Was that by conversation or in a letter? A. By conversation

Q. I show you a letter dated November 20th, 1893, and ask you to state in whose handwriting is is. A. Mr. Tracy's—Philip A. Tracy's.

"Exhibit Erle H. Turner No. 1," see page 423.

(The above-mentioned letter was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Erle H. Turner No. 1.")

93 Q. I show you a letter dated March 16th, 1894. State in whose handwriting that is? A. Mr. Tracy's.

"Exhibit Erle H. Turner No. 2," see page 424.
(The above-mentioned letter was thereupon offered in evidence by counsel for the complainants, and the same is filed herewith, marked "Exhibit Erle H. Turner No. 2.")

Q. I show you a letter dated May 8th, 1894. In whose handwriting is that? A. Mr. Tracy's.

"Exhibit Erle H. Turner No. 3," see page 425.
(The above-mentioned letter was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Erle H. Turner No. 3.")

Q. I show you a letter dated February 24th, 1897. State in whose handwriting that is. A. Mr. Tracy's.

"Exhibit Erle H. Turner No. 4," see page 426.
(The above-mentioned letter was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Erle H. Turner No. 4.")

Q. I show you a letter dated June 24th, 1897. State in whose handwriting that is. A. Mr. Tracy's.

"Exhibit Erle H. Turner No. 5," see page 427.
(The above-mentioned letter was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Erle H. Turner No. 5.")

Q. I show you a letter dated August 18th, 1897. State in whose handwriting that is. A. Mr. Tracy's.

"Exhibit Erle H. Turner No. 6," see page 428.
(The above-mentioned letter was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Erle H. Turner No. 6.")

94 Q. I show you a letter dated January 29th, 1898. State in whose handwriting that is. A. Mr. Tracy's.

"Exhibit Erle H. Turner No. 7," see page 430.
(The above-mentioned letter was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Erle H. Turner No. 7.")

Q. I show you a letter dated "2/24/1898." State in whose handwriting that is? A. Mr. Tracy's.

"Exhibit Erle H. Turner No. 8," see page 431.
(The above-mentioned letter was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Erle H. Turner No. 8.")

Q. I show you a fragment of a letter dated February 8th, 1898. State in whose handwriting that is. A. Mr. Tracy's.

"Exhibit Erle H. Turner No. 9," see page 432.

(The above-mentioned fragment of a letter was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Erle H. Turner No. 9.")

Q. I show you one sheet of a letter dated February 11th, 1898. State in whose handwriting that is. A. Mr. Tracy's.

Q. Do you know where the rest of that letter is? A. No, sir.

Q. In whose handwriting is the scribbling on the back of it? A. My own.

"Exhibit Erle H. Turner No. 10," see page 433.

(The above-mentioned portion of a letter was thereupon offered in evidence by counsel for the complainants; and the same
95 is filed herewith marked "Exhibit Erle H. Turner No. 10.")

Q. I show you a letter without date, headed "623 13th street, northwest," and ask you to state in whose handwriting that is. A. Mr. Tracy's.

"Exhibit Erle H. Turner No. 11," see page 434.

(The above-mentioned letter was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Erle H. Turner No. 11.")

Q. I hand you a piece of paper without date, and signed "In haste, P. A. T.," and ask you to state in whose handwriting that is. A. Mr. Tracy's.

Q. Do you know where the rest of that letter is? A. I do not.

Q. Have you any means of fixing its date? A. I have not. I might read it.

"Exhibit Erle H. Turner No. 12," see page 435.

(The above-mentioned piece of paper was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Erle H. Turner No. 12.")

Mr. WILSON: To each and every one of the letters which have been offered in evidence and marked from Exhibits 1 to 12, both inclusive, I object on the ground that the same are immaterial and irrelevant, and that the fragments are not sufficiently proved or identified.

By Mr. JOHNSON:

Q. I hand you a deed dated the 27th day of April, 1898, purporting to be executed by Philip A. Tracy, and a letter dated April 27th, 1898, purporting to be signed by W. E. Edmonston. I ask you to look at those two papers and state if you received them, and
96 if so how? A. I received the deed by express.

Q. And the letter? Was that with it? A. I do not remember whether it was or not. I think this came with it.

Q. Have you the envelope in which the letter was transmitted to you? A. No, sir.

Q. Do you know what has become of it? A. It was destroyed, I think.

Q. In whose handwriting, if you remember, was the superscription on the envelope? A. Mr. Tracy's.

Q. Did Mr. Tracy ever write you any letter or make any communication to you with reference to that deed? A. I think he wrote me he was going to transfer it to my mother.

Q. Did you receive that before or after his death? A. After his death, I think.

"Exhibits Erle H. Turner No. 13," see page 436. No. 14, see page 440.

(The above-mentioned deed and letter were thereupon offered in evidence by counsel for the complainants; and the same are filed herewith, marked, respectively, "Exhibit Erle H. Turner, No. 13" and "Exhibit Erle H. Turner No. 14.")

Q. Did you ever see Mr. Edmonston? A. Yes, sir.

Q. Did you show him that deed and letter? A. I showed him the deed.

Q. Will you state what if anything he did? A. He took me over to the register of wills, and showed me Mr. Tracy's will, and then brought me over here.

97 Q. Brought you over where? A. Here, over to your office.

Q. Had you ever been here before that? A. I had not.

Q. State whether or not that was the occasion of your placing your affairs in our hands. A. It was.

Q. I hand you a number of envelopes, all addressed to Erle H. Turner, I will ask you to look at them, and state in whose handwriting the address is. A. Mr. Tracy's.

"Exhibits Erle H. Turner Nos. 15, 16, 17, 18, and 19," see pages 441, 442, 443, 444, 445.

(The above-mentioned envelopes were thereupon offered in evidence by counsel for the complainants; and the same are filed herewith, marked, respectively, Exhibits Erle H. Turner, Nos. 15, 16, 17, 18 and 19.)

Q. How did you learn of the death of Mr. Tracy? A. I wrote him a letter for some money and a Mr. Darlington answered it, stating that he was dead, and asked me what he could do for me.

Q. Had you ever met Mr. Darlington? A. Not at that time. I never did meet him.

Q. Did you make any effort to meet him? A. I went to his office. When I received this letter I wired him asking him if there was any mention made of a trust of money of the S. H. Turner estate, or something to that effect; and he wrote me back there was not. Then I came on here and went to his office to see him, and he was out. I saw a young man there, and I think I went from there to Mr. Gray's, or I went from there to Mr. Ed-

monston's and then to Mr. Gray's. I am a little bit mixed
98 on that, as to just how I did go; but I went to Mr. Darlington
first.

Q. Was that the Mr. Gray who is now present? A. Yes, sir.

Q. Did you see him? A. Yes, sir.

Q. Did you have any conversation with Mr. Gray? A. I talked to him about the estate.

Q. Where was it that you met him? A. I suppose it was at his house.

Mr. **Gray**: Well, where was it?

The **Witness**: I don't remember where it was.

By Mr. **Johnson**:

Q. Did you ask any information of Mr. Gray? A. Yes, sir; we talked for quite a while about the estate.

Q. What information did you get? A. I don't know whether I got any or not that was any use to me. He said that of course he only wanted to administer on the estate what was right, and if it was ours, why, he would do nothing to keep us out of it. It didn't make any difference to him whose it was, he said; that all they wanted to do was to give the money to whom it belonged. That was the sense of it. I don't remember his words. He told me that Mr. Tracy told him that it had been settled years ago; and I asked him if he found any receipts from me to Mr. Tracy for money, and he said no, that they could not find a scrap of anything.

Q. Was that about all? A. No; we talked quite a while, but
that is all of the things I can recall.

99 Q. Now, did you in point of fact receive any money from
Mr. Tracy in his lifetime? A. Yes, sir.

Q. On more than one occasion? A. Yes, sir; a number of times.

Q. In what amounts? What was the largest amount that he ever sent you, that you remember? A. I am not sure about the amounts—three or five hundred dollars, I think.

Q. What was the smallest amount that he ever sent you? A. I don't think that he ever sent me less than twenty dollars. He might have sent me ten dollars.

Q. Did you give him receipts for the money? A. Yes, sir.

Q. Did you keep an account of it? A. Not an accurate account.

Q. Well, did you keep any account at all? A. Not in a book. I went by my memory.

Q. Well, you did not keep an account, then? You wrote nothing down? A. No, sir; I did not keep any account.

Q. What is your recollection as to the aggregate amount that he gave you? A. Well, he wrote me that at one time it amounted to $1400 I think; and if he has got receipts for that, I think he has got a receipt for either $300 or $500 too much. I could tell if I had the receipts.

Q. The question I am asking you is, what is your recollec-
100 tion as to the actual amount that he gave you? A. My only
way of getting at the amount would be if he stated that it

was $1400, and he had $500 too much, it would make it $900; or if he said it was $1400 and he had $300 too much, it would make it $1100.

Q. My question, Mr. Turner, is what is your recollection as to how much he gave you altogether, if you have any recollection on the subject? A. I don't remember how much; that would be the nearest I could get at it.

Q. Do you agree that it was — much as $1400? A. I am willing to admit that, but I don't think it was.

Q. Well, if you do not think it was, how much do you think it was? A. Either $300 or $500 less. That is what I think.

Q. Now, after Mr. Edmonston brought you to this office, did you write to your father for any information about this estate? A. Yes, sir; I wrote to him and asked him.

Q. At whose suggestion did you do that? A. At yours.

Q. Did your father send you any papers? A. Yes, sir; he sent me several papers and letters.

Q. Look at this paper, dated Washington, D. C., April 30th, 1888, and state whether or not that is one of the papers. A. It is.

101 Q. At the bottom of that paper is written in lead pencil "Is on record at Warrenton, Va." In whose handwriting is that lead-pencil writing? A. Mine.

"Exhibit Erle H. Turner No. 20," see page 446.

(The above-mentioned paper was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Erle H. Turner No. 20.")

Q. Look at this envelope or jacket, endorsed "Notes belonging to S. H. Turner, 1888," and state if that is one of the papers that your father sent you. A. Yes, sir.

Q. In whose handwriting is that endorsement? A. Mr. Tracy's.

"Exhibit Erle H. Turner No. 21," see page 447.

(The above-mentioned envelope was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith and marked "Exhibit Erle H. Turner No. 21.")

Q. I show you two sheets of paper, headed, "S. H. Turner," containing dates, names and figures in ink, and ask you to state in whose handwriting they are. A. Mr. Tracy's.

Q. At the bottom of the second sheet are the words, in lead pencil, "This list was given by Mr. Tracy as a list of the property of S. H. Turner, in his hands." In whose handwriting are those words? A. My own.

Q. From whom did you receive those papers? A. My father.

Q. Was that at the same time you received the copy of the will? A. Yes, sir.

102 "Exhibit Erle H. Turner No. 22," see page 448.

(The above-mentioned sheets of paper were thereupon offered in evidence by counsel for the complainants; and the same are filed herewith, marked "Exhibit Erle H. Turner No. 22."

Q. On the first sheet is a lead-pencil footing, "24, 122.10." In whose handwriting are those figures? A. I could not say positively.

Q. On the second sheet, in lead pencil, is written: "Am't for'd 24,122.10." Do you know in whose handwriting those words and figures are? A. I do not.

Q. Now, Mr. Turner, did Mr. Tracy tell you at any time of what your uncle's estate consisted? A. He did not.

Q. Did he tell you the amount of it? A. No, sir.

Q. Did you ever ask him? A. I don't think I did. I don't remember. Do you mean at any time?

Q. At any time. A. I don't remember that he told me.

Q. You have stated your arrangement with your father about the working the wheat farm in Texas. I ask you to state whether your father ever settled with you for your interest in that.

Mr. Wilson: I object to that question as incompetent and immaterial.

A. He did.

Q. Did you harvest the first crop? A. Yes, sir.

103 Q. Who harvested the second? A. Why, he did, or he superintended it.

Q. You left before it was harvested? A. Yes sir.

Q. Did he give you any account of the proceeds? A. Of the last crop?

Q. Of either. A. Do you mean by that, Mr. Johnson, did he ever settle with me?

A. No; did he ever give you any account of the proceeds; did he tell you what it brought above the expenses, or anything about it; did he state the account? A. No, sir; he never stated the account.

Q. Now, did he ever settle with you for your interest? A. Yes, sir.

Q. For your nearly two years of work? A. Yes, sir.

Q. In what way? A. He gave me a check on the Second national.

Q. The Second national bank? A. Yes, sir.

Q. What Second national bank? A. Of Washington, D. C.

Q. Do you know how much? A. My memory of it is that it was $1500—not the check, but all together; one note and one check amounting to that.

Q. What did you do with it? A. With the money? I spent it.

104 Q. With the check and the note? A. I deposited the check in the bank for collection, and the note with it.

Q. Well, did you use the money? A. Yes, sir.

Mr. Wilson: I object to all these questions and answers as to the witness's dealings with his father.

By Mr. Johnson:

Q. Did your father at any other time give you any other money? A. He gave me a note at the same time with that.

Q. I say, at any other time did he give you any money? A. No, sir.

Q. Now I want you to state whether or not you accepted that in settlement of your claim for the wheat crop? A. I did.

Q. Did you know where he got the money or the notes that he gave you? A. I did not. It was of no importance to me.

Q. When was that settlement made? A. In April, 1891.

Cross-examination.

By Mr. **Nathaniel Wilson**:

Q. When did you come of age? A. I was born in 1868; it would be October, 1889.

Q. What day of the month? A. October 21st.

105 Q. Where were you then living? A. In Louisiana.

Q. Where? A. In Minden.

Q. Who were in the family at that time; who constituted the family? A. My mother and father, Ashby, Lunette, and Wilmer. I don't remember whether the baby was born before I was 21 or afterwards. There was another one; she died an infant; I don't remember just when she was born; she only lived a short time afterwards.

Q. What were you then engaged in; what business? A. I was out on the place at home; it was a little farm.

Q. Working on the farm? A. Yes, sir.

Q. A farm of how many acres? A. 160.

Q. What kind of a house was that in which you lived? A. A frame house.

Q. How many rooms? A. Four.

Q. What was cultivated on this farm? A. What was raised?

Q. Yes. A. Cotton, corn and potatoes.

Q. Were you working on the farm at that time? A. Yes, sir.

Q. Under what arrangement with your father? A. Under no special arrangement.

106 Q. In what business was your father then engaged? A. You mean just at the time I became 21 years of age?

Q. Yes. A. He was deputy clerk, I think.

Q. Of a court? A. Of the court; yes, sir.

Q. What was the court? What was it called? What was the name of the court? A. He was deputy county clerk; I suppose that would be the county court.

Q. Deputy county clerk? A. Yes, sir.

Q. Of what county? A. Webster.

Q. Do I understand you to say that the house and the farm belonged to your mother?

Mr. **Johnson**: He did not say anything about it.

A. I have not said anything about it. I was not asked.

Q. Did you know then? A. Yes.

Q. Who did it belong to? A. My mother.

Q. How do you know that? A. I don't know how I knew it.

Q. Where had you received your education up to that time? A. There in the city, in Minden.

Q. You went to school there? A. Yes, sir.

107 Q. How long did you live in Minden? A. Until 1889 or 1890, I don't remember which—1889, I think.

Q. You lived in Minden until 1889 or 90. Did you come of age before you left Minden or afterwards? A. My memory is I came of age before I left Minden.

Q. When you left Minden where did you go? A. To Ennis, Texas.

Q. In what month? A. July or August.

Q. What year? A. 1889.

Q. Then you left Minden before you were of age? A. My memory is that I did not leave there until after I became of age.

Q. Then you must have left there after 1889. State as nearly as you can when it was? A. Well, I will tell you, Mr. Wilson; I can go backward. I went from there to Vernon. I was in Vernon nearly two years, and I lived there until 1891. I was there nearly two years, and I left there the spring of 1891. I can't carry dates in my head at all. Now, that would make it 1889.

Q. Where and when did you first vote? A. I never voted.

Q. You never voted in Louisiana or Texas? A. No, sir.

Q. When you did leave Minden you went to Ennis, Texas, I understand? A. Yes, sir.

108 Q. When did you arrive there? A. In July or August.

Q. Of what year, as near as you can tell? A. My memory would be 1889.

Q. Who did you go there with? A. My father and my mother and the children.

Q. All of the family left Minden and moved to Ennis? A. They did not move; they just went there and stopped over to visit.

Q. All the family went to Ennis, then? A. That is it.

Q. For what purpose? A. My father wanted to go out in Texas, and he took the family as far as Ennis, and left them there, and then we went up further west in Texas.

Q. When you returned to Ennis, how was the family located there? A. Why, I don't know whether you would say they were visiting or boarding.

Q. Well, they went to stay with friends, I suppose? A. With friends, yes.

Q. And you and your father went on? A. To Vernon.

Q. What time did you arrive in Vernon? A. Perhaps a week after leaving Ennis in July or August.

Q. In what year? A. We only stopped there a few days.

Q. What year? A. 1889.

Q. When you got to Vernon what did you do? A. Father

109 bought a piece of land out in the country.

Q. How many acres? A. 640.

Q. Where? A. In Willbarger county.

Q. Was it improved or unimproved? A. Well, in those days it was considered improved; that is, there was a little fencing on it and a little shanty.

Q. Had it been cultivated? A. Only a very small portion of it.

Q. What buildings were on it? A. A little two-room house and a sort of a shed, a stable shed.

Q. Where did you and your father go to live? A. While we were up there?

Q. When you got there? A. We boarded.

Q. Where? A. I don't remember; I imagine at a hotel.

Q. And what did you do with reference to the land that you have just spoken of? Did you proceed to cultivate it? A. Why, I cultivated it. He purchased that and bought some property in town, and left an order with the builder to build a house there.

Q. I am asking you what you did with reference to this purchase of ground. Did you proceed to execute it? A. Well, I went
110 out and improved it and put in a wheat crop. It had to be fenced, and the sod had to be broken. New land has to be broken.

Q. You went and improved it. What improvements did you make on it? A. Fencing and the breaking of the ground.

Q. Did you fence it all? A. It was partly fenced.

Q. When you got through it was all fenced? A. Yes, sir; and there were division fences.

Q. And you broke it up? A. Yes, sir.

Q. Did you put up any buildings? A. We added to and improved what there was.

Q. Did you do that with your own money? A. My individual money?

Q. Yes. A. No, sir.

Q. Whose money did you do it with? A. Father's.

Q. Did you expend it? A. Myself?

Q. Yes. A. For the improvements; yes sir.

Q. How much did you expend? A. I don't know.

Q. Did you keep, any account? A. I did at that time.

Q. What did you do with it?

Mr. Johnson: Do you mean with the money or with the account?

Mr. Wilson: The account.

111 A. I don't know what became of it.

Q. Did you present it to your father? A. When I came to see him, when I saw him for a settlement?

Q. Yes. How did you keep the account for moneys that you expended. That is what I want to know. A. I kept memorandums of it.

Q. And returned them to him with any regularity at any stated periods? A. Not until I came up and settled with him.

Q. Until you came up and settled with him? A. Yes, sir.

Q. How much money, approximately, did you receive from him that you expended in the improvement of the place? A. Several thousand dollars.

Q. Well, how many? Of course I do not expect you to give it down to a dollar or a cent. A. Let me ask you a question: If I owed a man there for something—improvements, say—and he sent me a check payable to the man and I turned it over and gave it to him, how would that be? Would I be handling that money?

Q. You would be handling that money. What I mean to say is, how much money was spent by you or under your direction or with your knowledge in that way on the place? A. Three or four thousand dollars.

Q. What did the place cost? A. $2,500, I think.

Q. Do you know of your own personal knowledge, in whose name the deed was taken? A. I never saw the deed.

112 Q. Did you see the money paid? A. I did not.

Q. Who was the land bought from? A. A man named Greer, I think.

Q. What is his first name? A. I don't know.

Q. Where does he live? A. He did not live there. I don't know where he lived; some little town east of there.

Q. Did you ever see the deed after it was made? A. I did not.

Q. Do you know when you went out and did the first work on the place? A. About the month? I think it was in August.

Q. Of what year? A. 1889.

Q. At that time your mother and the rest of the family still remained in Ennis? A. Yes, sir.

Q. When did they come to Vernon? A. I think it was about December.

Q. Of the same year? A. Yes. It might have been later.

Q. When they got to Vernon, where did they go to live? A. In the house there that they bought. The lot had been bought, and father left orders for a house to be built on it.

Q. A lot had been bought in the meantime? A. When he went up to buy the farm he bought the lot.

113 Q. What did he give for the lot? A. $750, my memory of it is.

Q. Who did he buy that of? A. A man named Winan, I think.

Q. Did you see the deed? A. I don't remember.

Q. Was a house built on that? A. Yes, sir.

Q. How much was spent for that? A. For the house alone?

Q. Yes. A. About $1500.

Q. About how large a lot was that? A. I think it was an eighth of an acre.

Q. Had it any buildings besides a house? A. Yes, sir.

Q. What? A. A chicken-house, stable, and outhouse or water-closet.

Q. How much did they all cost? A. I included all that.

Q. All the improvements on the lot came to $1500? Is that it? A. Yes; about that—more or less, maybe, a little.

Q. Then the family moved in when? A. About December.

Q. They took possession of the house in December, 1889? Is that so? A. December, 1889, or January of 1890; about December.

It might have been January. My memory of it is that it was December.

114 Q. Have they lived there ever since? A. No, sir.

Q. Where have they lived since then? A. They lived there until the following summer.

Q. Well, where did they go then? A. Then they all came to Virginia.

Q. The whole family moved to Virginia? A. Yes, sir.

Q. Furniture and all? A. No; they sold their furniture. I think it was sold out there. They didn't bring anything with them.

Q. What became of the house? Was it left unoccupied? A. It was rented.

Q. What became of the place? Was that rented too—the $640 acres? A. No, sir; I was on it.

Q. You were on that? A. Yes, sir.

Q. And you continued to remain on the farm when they came to Virginia? A. Yes, sir.

Q. Where did they come to in Virginia? A. I couldn't say just where it was.

Q. Did they go back to Texas? A. Did they ever go back again? Yes, sir.

Q. When? A. Well, they didn't all return at one time.

115 Q. Your mother and father, I mean; they were the head of the family. When did they go back? A. Father returned the spring of 1891, and mother—I don't think she returned for maybe a year.

Q. When your father got back, where did he go? A. He went to the farm.

Q. Did he live on it? A. I think he did.

Q. He lived with you on the farm? A. No, sir; I had come East.

Q. You had come East before your father got back, had you? A. Yes, sir.

Q. You had come East before 1891? A. No; I came East in 1891.

Q. Well, your father returned in the spring of 1891? A. Yes, sir.

Q. That is what I understood you to say? A. Yes, sir.

Q. Now, when did you come East? Before that, or after that? A. About April 1891.

Q. Did you come East before he returned? A. Before he returned, yes sir.

Q. When you left there, what was there on the farm in the way of improvements? A. The buildings.

Q. What buildings? A. A small dwelling and the fencing and the stable.

Q. Barns and outbuildings? A. Barns and outbuildings; yes, sir.

116 Q. Up to the time that you left, about how much had those buildings cost? A. Up until the time that I left? Why,

not very much. Part of them were there when the place was purchased, and the house had only been improved a little.

Q. How much had you spent before you came away in improvements? A. Actual improvements, or on the buildings?

Q. Yes. A. You wouldn't count putting in land improvements, would you?

Q. I am only talking about the improvements on the surface. A. Well, Mr. Wilson, would you consider breaking the sod there an improvement? They consider that an improvement on land there.

Q. No; that is another matter.

Mr. JOHNSON: You mean the buildings, do you?

By Mr. WILSON:

Q. The buildings, of course. "Improvements" means the construction that you did on the surface of the ground. A. Well, not very much. The fencing was the main cost.

Q. You have already spoken about that. Then, immediately before you went, you did not construct any buildings of any consequence? A. No, sir.

Q. When your father actually got there and took possession again, you do not know, because you were not there? A. No, sir.

Q. And you never went back again, did you? If so, when?
117 A. I think it was two years later I went out there.
Q. In the spring of 1893, was it? A. I don't think it was the spring. It seems to me it was in the fall, a year and a half or two years later.

Q. It was in the fall of 1892 or the spring of 1893, was it?

Mr. JOHNSON: He does not say it was the spring at all. He says it was the fall.

By Mr. WILSON:

Q. Well, if it was two years it certainly was the spring? A. I didn't say two years, Mr. Wilson; I said about two years later.

Q. I am not testifying, you are testifying. You said you left in the spring; and now I ask you to say when you went back. You can answer it according to your recollection. I want you to state the month and the year when you went back. A. I cannot remember. It was within two years.

Q. That is as near as you can come to it, is it—within two years? A. Yes, sir.

Q. Why did you go back? A. I think I had an idea of going further west.

Q. When you did get back, who did you find living on the farm? A. Father.

Q. In a house on the farm? A. Yes, sir.

Q. Who lived with him? A. The hands. I don't remember just who they were.

118 Q. Well, they were the hands, and nobody else. Was he carrying on the farm? A. Yes, sir.

Q. Who was living in the house in town? A. I don't know. I think it was rented.

Q. And where was your mother living? A. In Virginia.

Q. When, if ever, did the family re-occupy the house in town? A. I think they lived in it two years later; maybe one year. I wasn't there; I don't know anything about it. I only stayed a short while; but I am under the impression that when mother came back, they lived in the house again.

Q. You do not know now where they lived, of your own knowledge, do you? A. Yes. Mother came back the same fall that I went back, and they lived in the house again. That is right.

Q. Then she was living in the house while you were there a part of the time? A. Yes, sir.

Q. Who constituted the family living in the house when you were there on the occasion of your return? A. Ashby and Lunette, and I don't remember whether Wilmer was there or not.

Q. Was that your last visit there? A. Yes, sir.

Q. You have not been back since? A. No, sir.

Q. When did your father cease to be a deputy clerk of Webster county, Louisiana? A. After he came to Virginia I don't
119 think he ever occupied the position of clerk.

Q. When was that? Give me the dates, please. I ask you when your father ceased to be deputy clerk in Webster county, so far as you know? A. Well, my memory is that he left Louisiana in the summer of 1888, and came to Virginia.

Q. And never was deputy after that? A. I don't think he ever acted as deputy after that.

Q. If you know, what salary did he get as deputy? A. I could not say.

Q. You have no idea? A. I could not say.

Q. You have not any idea? A. No, sir.

Q. After he ceased to be deputy clerk, what if any income did he have from any source that you know of? A. I do not know of any.

Q. Did he have any other occupation or business? A. Than deputy?

Q. From which he derived any income after he ceased to be deputy, so far as you know? A. No, sir.

Q. He did not have any? A. Not that I know of.

Q. How was the purchase-money of the land, the plantation and the lot in Texas, obtained by him? A. You mean how it was paid, or how did he get the money?

Q. How did he get it? A. I don't know how he got it.

120 Q. The 600 acres and the house in Texas still belong to him, do they; or do you not know? A. I don't think they do.

Q. Who do you think they do belong to? A. I don't know, sir.

Q. How was the family supported, so far as you know, after they left Louisiana? A. Why, father supported them.

Q. With money derived from what source? A. Well, I suppose it was money that Mr. Tracy left.

Mr. Johnson: I object to that answer, on the ground that the witness's supposition is not competent evidence.

By Mr. Wilson:

Q. Of course you understand I am only asking you about things which you know. A. Well, I would not be in a position to know how he got the money.

Q. Your answer is you do not know. Are you on good terms with your father now? A. Yes, sir.

Q. And have been continuously since you left home? A. Well, what would you mean by good terms--writing to him?

A. The terms on which a son usually lives in respect of his father—terms of affection and confidence. A. Well, yes; I would consider I have always been on good terms with him.

121 Q. Has your father, since he ceased to be deputy clerk in Louisiana, ever had any other business or occupation except that connected with the cultivation of this land in Texas? A. Not that I know of.

Q. Was he a practical farmer? A. You mean by that did he understand it?

Q. Was he actually engaged in the farming business? Had he ever been a farmer? A. Well, when we lived in Louisiana, he owned this little place there in the town, and it had always been run; he had somebody to do it for him.

Q. He did not undertake to do it himself? A. No, sir; I don't know whether I could consider him a farmer or not.

Q. When the family moved into the property in the town of Vernon, Texas, about what were the ages of the children?

Mr. Johnson: I must object to that as not proper cross-examination, the witness not having been interrogated on that subject.

A. I do not remember.

By Mr. Wilson:

Q. You cannot tell approximately how old your sisters and brothers were at that time? A. About their age?

Q. Yes. A. My sister Wilmer was about 14, and Ashby about 9, and Lunette about 6. I don't know that those were the correct ages.

Q. Well, that is near enough. They were all at home then? A. Yes, sir. That was when they moved there the first time.

122 Q. It was? A. Yes, sir.

Q. They continued to live there, so far as you know, except for the absence in Virginia? A. Yes, sir.

Q. I understood you to say in respect of the plantation that you do not know whether your father owns it now or not. You have not any knowledge yourself? A. I don't think he owns it.

Q. I say, you have not any knowledge of it? You do not know? A. No, sir; I don't exactly know.

Q. Do you know whether they own the house in town? A. They do not.

Q. Do you know when that was disposed of? A. Let me ask you a question, Mr. Wilson; if I was told that they did not own the house in town, would I know that they didn't own it?

Q. No; not unless you know yourself, personally. You are not to speak of what other people told you, but only of what you know yourself, either from their having vacated the house or from their having made a deed for it, or something which would enable you to know personally. A. Well, then I don't know whether they owned the farm or not.

Q. You do not know whether they owned the farm or not? A. No.

Q. That is what I want to know; you dimply do not know.
123 Did you know your uncle who lived in Virginia? A. Silas H. Turner?

Q. Yes. A. No, sir.

Q. You never saw him? A. No, sir.

Q. Did you know you had an uncle living there? A. Yes.

Q. When and where did you hear of his death? A. The first time?

Q. Yes. A. In a letter to my mother from father.

Q. Well, I say, when and where? A. While I was living in Louisiana—Minden, Louisiana. I am not positive of the date.

Q. Well, about when? A. It was shortly after his death.

Q. And you say you saw the letter signed? A. From father to mother; yes, sir.

Q. How came you to see it? Did she hand it to you, or read it to you, or how was it? A. Well, I suppose she handed it to me. We all read them. If the letter came home from father we would all read it.

Q. He was then in Virginia? A. Yes, sir.

Q. How long had he been in Virginia? A. I think he had been in Virginia about a month or two months before uncle's death—from one to two months before uncle's death.

Q. And how long after you read that letter did he re-
124 turn? A. One or two months. It was about December, I think, that he returned.

Q. You said in reply to a question that was asked you that in that letter your father stated that your uncle had left his estate to him? Is that correct? A. Yes, sir.

Q. And the letter did not say anything about the children having any interest in the estate? A. That was all the allusion made to the estate.

Q. You understood from that that you had no interest in it except through your father? A. Yes, sir.

Q. When and where and from whom did you first know that you had any interest in the estate of your uncle, or that you were mentioned and provided for by his will? A. Why, my memory is that it was from Mr. Tracy.

Q. Well, what do you say to the rest of the question? A. I think it was from Mr. Tracy, here in this city.

Q. When? A. I think it was in the year 1891.

Q. In the city of Washington? A. Yes, sir.

Q. Where in the city? A. Either the National hotel or the Post-Office Department.

Q. Can you give the year and the month of the year? A. 1891, as near as I can remember.

Q. Can you not give the month? Can you not state the
125 month? A. It was later than April.

Q. The day of April you do not remember? A. I don't say it was April.

Q. Later than April? A. Later than April.

Q. But when you could not say? A. No, sir.

Q. Why were you here at that time? A. I don't remember what I came over for.

Q. What occupation were you in then? A. In 1891? I wasn't doing anything.

Q. How long did you stay here? A. Only a few days.

Q. Where did you come from to Washington? A. Philadelphia, I think.

Q. What were you doing in Philadelphia? A. I wasn't doing anything.

Q. How long had you been there? A. I couldn't say. I could place the date if I knew how long I had been there when I came back.

Q. How would you say approximately? A. It was during that same year.

Q. What business had you been in there? A. During that year?

Q. Yes. A. I hadn't been doing anything.

Q. When you went back from here, what occupation did you engage in? A. I didn't do anything.

Q. What did Mr. Tracy say to you in respect of your un-
126 cle's estate and property? State as fully and as certainly as
you can. A. Well, he told me then that it had been left to us.

Q. Is that all? A. That is all I remember.

Q. Did he say what it consisted of? A. What form the money was in at his death?

Q. Or how much it was, either? A. I don't remember that he did.

Q. You do not remember that he said in what form it was, or how much it was? A. No, sir; not at that time.

Q. Did you ask him? A. I don't think I did.

Q. Your father had concealed, then, the fact that you had any interest in the property from you, had he? A. Yes, sir.

Q. And you did not know it until this conversation with Mr. Tracy? A. That is my memory of it—that I learned it first from Tracy.

Q. Did he give you no explanation as to what the estate consisted of, or what had been done with it? A. Mr. Tracy or my father?

Q. Well, I am speaking now of Mr. Tracy. I ask you about Mr. Tracy. A. I think he told me he had it invested in real estate.

Q. Did you at that time or at any time say to Mr. Tracy
127 that your father had written to your mother that the prop-
erty had been left to your father? A. I don't remember; I
might.

Q. When Mr. Tracy gave you the information to which you have just referred, you knew that any statement such as you have just quoted as having been made by your father in that letter was not correct, did you not? A. After he told me that I did; yes, sir.

Q. Did you ever tell your father what Mr. Tracy had said? A. Yes.

Q. When? A. Shortly after that.

Q. How and where? A. I must have written him.

Q. Do you remember that you did write him? A. I don't remember writing the letter; but I know I did from other things.

Q. Did you ever ask of your father any accounting to you of the moneys that he had received from your uncle's estate? A. Not until I wrote to him for information in regard to this suit.

Q. Just the other day? A. No; it was some time back.

Q. Well, when? When did you first write him for information? A. Why, shortly after this suit was started.

Q. You began this suit, though, before you asked him for any
information, is not that so? A. Well, what do you mean by infor-
mation, Mr. Wilson. Do you mean in regard to how he had
128 spent the money, or whether the money was left to us or
not?

Q. Well, either? A. Well, I had not asked him how the money had been disposed of. When this suit was started I wrote to him for all the papers he had that would bear upon the case.

Q. And that is all you did write to him about it, is it not? A. No, sir; I had some correspondence with him, my memory is in 1891, after I found out that the money had been left to us.

Q. What did you ask him then, in that correspondence? A. I guess I told him what Tracy said. I don't just remember.

Q. What did he say? Did you get a reply? A. Yes.

Q. Have you got the letter? A. No, sir.

Q. What became of the letter? A. I suppose it was destroyed.

Q. When Mr. Tracy told you what your uncle's will was, you knew, did you not, that your father had received money in respect to that estate and your uncle's property? A. When Mr. Tracy told me that it was left to us, did I know that father had ever gotten any money out of it?

Q. Yes. A. Why, I supposed he had.

Mr. Johnson: I object to the supposition.

The Witness: I read a letter in Louisiana stating it had
129 been left to him, so that would be natural—that this money
was what he had gotten from that.

Mr. Johnson: I object to the witness's inferences or suppositions, and submit that his testimony must be confined to what he knows, if anything.

By Mr. WILSON:

Q. When Mr. Tracy gave you that information about the will, you knew that your father had not had any source of income or source from which he could or did obtain money after he resigned as deputy clerk in Louisiana, did you not? A. I don't think he had any employment after that.

Q. Or was there any source from which he got money or could get money that you knew of? A. Well, I wouldn't know.

Q. None that you knew of? Is that it? A. Yes, sir.

Q. Did Tracy, at the time he made this communication to you, make any statement to you about having handed over or paid any money over to your father? A. I don't know but that he did.

Q. As nearly as you can recollect—it is a good while ago, of course —what did he say? A. I could not repeat the conversation.

Q. Well, give us the substance of it. A. I couldn't even say what he said, because I know now that he got it, and I couldn't tell when I became aware of it.

Q. Well, when he told you that this money or this property belonging to your uncle was for you, or you had an interest in it, you certainly made some inquiry as to what it was and where the money was, did you not? A. He told me it was invested in real
130 estate.

Q. Did he tell you how much? A. No, sir.

Q. He gave you no idea of how much it was? A. I don't remember asking the amount.

Q. And he did not tell you that he had given any of the money to your father or had transferred the notes to your father at all? A. I said I did not remember that.

Q. You have not any recollection of that at all? A. I said I didn't know whether he told me at that time or not.

Q. Up to that time do I understand you to say that nothing had occurred that led you to believe or to think that your father had intentionally kept from you the fact that you were interested in the property? A. No.

Q. That was the first intimation you had of it, was it? A. I think it came from Tracy first.

Q. Now, will you tell me when and where and from whom you first learned what the property left by your uncle consisted of? A. Why, when I got that list from my father.

Q. When? A. When we started this suit.

Q. After you started the suit, was it not? A. When I started it.

Q. I ask you whether it was not after you started the suit? A. I don't know just the date the suit was filed. It was at Mr.
131 Johnson's suggestion that I sent to him for this stuff.

Q. You filed a bill, did you not? A. Yes, sir—well, it was before that was done, of course.

Q. This bill was filed on the 10th of June, 1899. It was before June 10th, 1899, was it not? A. That is when that was filed?

Q. Yes. A. Well, that is my memory of it—that I got this before we filed that.

Q. And you never knew and never had asked of Mr. Tracy or your father or anybody else what that property consisted of until you wrote at the suggestion of Mr. Johnson? A. Mr. Tracy had told me that it was in real estate.

Q. Is that your answer? A. Yes.

Q. That is the best answer you can give, is it? A. Yes, sir.

Q. That you never had asked your father or Mr. Tracy or anybody else in respect of what the property received from your uncle consisted of? A. That is my first memory of knowing how it was invested or what it consisted of.

Q. You never knew what Tracy had received? A. I never knew the amount that Tracy had received from my uncle?

Q. Yes; or in what shape it was? A. No, sir.

Q. You did not know whether it was in money or in notes? A. No, sir.

132 Q. And you never asked your father, after Mr. Tracy told you contrary to what your father had told your mother, that you were interested in the estate? A. I never asked him how much it was?

Q. Or of what it consisted? A. You mean to say did I ever ask him how much it was?

Q. Yes. A. I don't know about that.

Q. Did you ever ask of your father the return of any of the money that he had received that belonged to you under the will? A. Did I ever ask for any of it? I don't know that I did.

Q. Now, if you have any means of refreshing your recollection, I want you to state more definitely what month and what day of the month, if possible, and what year this conversation occurred here with Mr. Tracy in which he told you what the will was. A. It was very shortly after I was here the first time, within a year of the time. I don't remember just when it was. I can't retrace my steps that far back. I wouldn't have thought anything of coming over here from Baltimore or from Philadelphia; and I think it was the same year.

Q. When you received this information from Mr. Tracy, what did you understand to be the value of the estate left by your uncle's will? A. I didn't know what the value of it was.

Q. Even approximately? You had no idea about it? A. No, sir.

Q. And you made no inquiry? A. I don't remember that I asked Tracy the amount.

133 Q. And Mr. Tracy did not tell you? A. I don't remember that he did.

Q. Well, when and from whom did you first get any idea as to the value of the estate and what was left by your uncle's will?

Mr. Johnson: I object to that question on the ground that it has already been answered at least three times.

A. Do you mean by that that it was left to us, or how the money as left at my uncle's death ?

Q. Well, either or both? A. Well, I can't answer it in that way, Ir. Wilson.

Q. When and from whom did you first learn the value of the state left by your uncle? A. The amount of it?

Q. Yes; the amount of it? A. I don't remember.

Q. When and from whom did you first learn the amount of noney belonging to the estate that was obtained by your father? . I couldn't state just what money he received, now.

Q. Can you state approximately, from any information that you ave received up to the present time, the amount of money that ame from your uncle's estate that was paid to your father?

Mr. Johnson: I object to that as calling for manifestly hearsay vidence.

A. I have no way of knowing.

Q. And you cannot say? A. Positively?

34 Q. Well, approximately? When you received information from Mr. Tracy that your uncle's will devised his property to you and your brothers and sisters, did you inform your nother and your brothers and sisters? A. I didn't tell them; I vasn't with them, and I don't remember writing them.

Q. Did you ever communicate that fact to them in any way? . Never at any time at all?

Q. Yes. A. I might some time later.

Q. When? A. I don't remember. It is common talk now. I lon't remember just when I did it. I have written to mother and vritten to sister.

Q. But you have no recollection that when you received that information from Mr. Tracy you did thereupon communicate it to your mother or to your sister? A. Immediately afterwards?

Q. Immediately afterwards, or at any time afterwards? A. Well, I have written to my sister about it since, and talked to her when we started this suit.

Q. When did you first tell her, so far as you know? A. About the beginning of this suit.

Q. Not before? You mean your eldest sister, do you not? A. Yes, sir. I don't think I had seen her for eight years until this time.

Q. When you found out from Mr. Tracy that you and your sisters and brothers were the owners of this estate, you did not communicate that to them that you remember by writing? A. I don't remember; not immediately afterwards.

135 Q. At any time afterwards did you ever write to them and tell them that fact? A. I have written to sister about it, of course, and I have written to mother about it.

Q. How do you suppose they found it out? A. I don't know how they found it out.

Q. Where were you on April 10th, 1891? A. April 10th, 1891?

Q. Yes. A. About that time I was in Washington.

Q. Was your father here? A. He was here with me about that time. I don't remember whether it was that date or not.

Q. Did you open an account in the Second national bank at that time? A. Yes, sir.

Q. Did he have an account in the Second national bank at that time? A. I think he did.

Q. What makes you think so? A. Why, he gave me a check that was payable at the Second national bank.

Q. Did you go there with him to get it? A. Yes, sir.

Q. Did you know how he happened to have an account there? A. I supposed he had opened it.

Q. Did you know it from him? A. Had he told me?

Q. Yes. A. Well, when I was in Texas he had sent me
136 checks to use out there.

Q. On the Second national bank? A. Yes; on the Second national bank.

Q. How were they signed? A. "T. M. Turner."

Q. Then when you got there and went there with him to the bank, did you see his account? A. Do you mean did I examine his account?

Q. Yes. A. No, sir.

Q. Did you see his bank book? A. Did I examine it?

Q. No; did you see it; did you see him have a bank book in his possession? A. I guess when he wrote me a check I did. I don't remember looking at the book; but if he *write* me a check I saw it.

Q. And the check was on the bank, the Second national bank? A. That is my memory of it; yes, sir.

Q. Did you know at the time where the moneys came from that were on deposit? A. You mean did I know where he got the money from that he paid me at that time?

Q. Yes. A. No; I did not. I had no way of knowing where he got it.

Q. Did you know how much he had there in the bank? A. No, sir. I had been told before that this money had been left
137 to him, and I didn't know whether it was that money or not. I never thought.

Q. This check was for $1200, was it not? A. Yes, sir.

Q. Did you get two notes, one of Philip Roth and John B. Avery, one for $325 and one for $200, at that time? A. Yes, sir.

Q. What did you do with those notes? A. I deposited them in the bank with the check.

Q. They went to your credit? A. Yes, sir.

Q. And you checked them out? A. Yes, sir.

Q. And you got the proceeds of those notes and the proceeds of the check? A. Yes, sir.

Q. To whom were the notes payable? A. The notes that were transferred to me? I don't think I saw them.

Q. You never saw them? A. I don't think I did. I don't remember now.

Q. How did you know the notes were there? How did you know the notes were there to your credit? Did you not have a bank book? A. I got a bank book when I deposited the check; and my memory of it is that they made a memorandum in the back of the book of the two notes that were placed to my credit.

Q. And you checked on the proceeds? A. Yes, sir.

Q. And I understand you to say that your father was here
138 and Tracy was here at that time, on the 10th of April,
1891? A. Yes, sir.

Q. And did you or not then know and had Tracy then told you, or had he not told you, that you were the beneficiaries under your uncle's will? A. Not at that time.

Q. He had not at that time? A. No, sir.

Q. Had you seen him at that time? A. Before I opened that bank account?

Q. Yes. A. I don't know whether I had or not. I was only here a few days, maybe one or two days, and I saw him during that trip, the two or three days. I can't remember whether it was before or after.

Q. But when this check was drawn by your father and given to you on the 10th of April, 1891, Tracy had not told you in regard to the provisions of the will? Is that so? A. That is my memory of it.

Q. When was it after that? A. How long after?

Q. Yes. A. I don't remember how long it was. I think it was some time during the same year.

Q. How did your father happen to come here? Why was he
here? A. Why, I think he came down to give me that money.
139 Q. He came here all the way from Texas to pay you? A. He
was not in Texas when I came North; he was in Virginia.

Q. Where was he in 1891? A. He was in Virginia and I was in Texas.

Q. You came from Texas to have a settlement with him, did you? A. Well, not exactly that. I wanted to come East. I was out there all alone, and I had gotten tired of it.

Q. I asked you to state as nearly as you could when you had this conversation with Mr. Tracy, and you said that you came here from Philadelphia. A. I think it was from Philadelphia. I know it was some time during the same year; and I was in Philadelphia and Baltimore both.

Q. What were you doing in Baltimore? A. At that time?

Q. Yes. A. I wasn't doing anything.

Q. Looking for business? A. Looking around; I guess looking for a position, or something to get into.

Q. Did you keep a diary then? A. No, sir.

Q. No memorandum of what you did from day to day? A. No, sir.

Q. I understood you to say, in reply to Mr. Johnson's question, that this $1725 was paid to you by your father in settlement of your
accounts with him about the plantation. Is that correct?
140 A. There was $1200 in a check, and one of those notes. I
don't remember which it was.

Q. According to the settlement of your accounts, how much did he owe you? A. My memory of it is that it was $1500.

Q. Well, then, what was the additional $200 for that he paid you then? A. The other note?

Q. Yes. You got $1725 did you not? A. Yes, sir. My memory of it is that it was fifteen. I wouldn't be sure, but it was $1200 in one note to settle up the account out there, and then he owed me some money from when I was a child. I always had a little money, you know, and he was my banker; and he would use that. There wasn't very much. I think it was somewhere near $200. I don't remember what it was; but one of the notes and the check paid the other, and my memory is that the smallest note was for that.

Q. And that was for money that he owed you for what? A. Money I had given him to keep for me.

Q. How much? A. About $200.

Q. How did you earn it? A. In various ways. Part of it was given to me.

Q. How did you earn the balance? A. I traded, like a boy would do. That is when I was young that I earned this money. I don't know just how it accumulated. I guess a great deal of it was given to me by relatives. Then I invested some. I used to buy sheep in this little town; I bought sheep and sold them.

141 Q. How did you arrive at the settlement of what was due you? A. You mean how did we get at the amount?

Q. Yes. A. Why, I always carried that amount; I remembered it was about that much for the money I had made when I was a boy, and we just agreed on the other.

Q. Did you give a receipt for the money that was paid you? A. I don't think I did.

Q. Was there any statement or settlement of account between you? A. Do you mean all itemized?

Q. Yes. A. No, sir.

Q. You just agreed upon a lump sum? A. Yes, sir.

Q. And he paid you that check and gave you those notes, and that was the end of the whole business? A. Yes, sir.

Q. When did you close your account with the bank; do you know? A. I don't remember.

Q. Will you state as nearly as you can how long you kept an account with the bank? A. I don't remember when the last check was drawn, Mr. Wilson.

142 Q. Is your account closed, do you know? A. It is closed now?

Q. Yes. A. Yes, sir.

Q. There is nothing there now? A. No, sir.

Q. When the last check was drawn, you do not know? A. No, sir.

(The further cross-examination of this witness was thereupon adjourned until Friday, May 17th, 1901, at 11 o'clock a. m.)

143 WASHINGTON, D. C.,
FRIDAY, *May 17th*, 1901—11 o'clock a. m.

Met pursuant to adjournment.
Adjourned until 1 o'clock p. m. of the same day.

WASHINGTON, D. C.,
FRIDAY, *May 17th*, 1901—1 o'clock p. m.

Met pursuant to adjournment.
Present on behalf of the complainants, Mr. Johnson.
Present on behalf of the defendants, Messrs. Nathaniel Wilson and Clarence Rich Wilson.
Present also George W. Gray, Esq., one of the defendants, in person, and Erle H. Turner, one of the complainants.

ERLE H. TURNER, the witness under examination when the adjournment was taken, resumed the witness stand for further direct and cross examination.

By Mr. JOHNSON:

Q. Mr. Turner, I wish you would state whether Mr. Tracy ever told you who wrote your uncle's will? A. He did.

Q. And if he did, what did he say to you, as near as you can remember, on that subject? A. Why, he told me that he had written it.

144 Q. Who do you mean by "he"? A. Tracy himself wrote the will; and he said that he had suggested to uncle to leave it to my father, and if I remember his answer was No, he would spend it, or something like that; and then he suggested that he leave it to his children, and that idea suited uncle, and he wrote the will.

Mr. WILSON: I object to the questions and answers as incompetent, immaterial, irrelevant and inadmissible.

Cross-examination resumed.

By Mr. WILSON:

Q. When we adjourned yesterday, I was asking you about your account with the Second national bank of this city; and I understood that the account was opened by your depositing the check for $1200 which your father gave you. Is that correct? A. Yes, sir.

Q. And that deposit was made in April, 1891? A. Yes, sir.

Q. Other deposits were made of notes for collection, and the amounts of the notes when collected were put to your credit in the bank; is that correct? A. Well, I considered that they were deposited when I deposited the check.

Q. I will ask you, then, of what your deposits consisted in addition to the checks, so far as you remember? A. Two notes.

Q. Do you remember when they were deposited? A. Why, the same day I deposited the check; that is my memory.

145 Q. Do you remember what notes they were? A. You mean who they were given by, and the names of them?

Q. Yes; the makers? A. No, sir.

Q. Do you remember making a deposit of $200 in November of the next year? A. I do not.

Q. Can you state accurately or approximately what the total amount of your deposits with the bank was? A. Why, if I had a hundred dollars and deposited it in the bank, if I opened an account in the bank and deposited a hundred dollars, and drew it out and deposited the same hundred dollars again, what would my deposits in that bank be? Would they be $200?

Q. Whatever you deposited. A. Well, would that be considered $200, when I had only had $100?

Q. Well, I cannot answer that. You will have to answer it.

(At the request of Mr. Wilson, the pending question was read to the witness.)

By Mr. Wilson:

Q. That is the question—if you remember what the total amount of your deposits with the bank was? A. Well, that $1700 and something; and I don't remember that other $200 deposit.

Q. You do not remember of making a deposit of $200 in November, 1892? A. I do not.

Q. Where is your bank book? A. I don't know where it is.

146 Q. When did you see it last? A. I can't remember.

Q. You have not got it in your possession now? A. Not that I can find. I looked for it, and my checks also.

Q. When you made the deposit of $1200 in April, 1891, I understand your father was here in the city with you? A. Yes, sir.

Q. And Mr. Tracy was here? A. Yes, sir.

Q. And you went from here to Philadelphia? A. Yes, sir.

Q. Did you leave your father here? A. My memory is that I did leave him here.

Q. When did you see him next after that time? That is, when did you see him next after April, 1891, and where? A. In Virginia.

Q. When and where in Virginia? A. In the western part of the State; I think it was within two years later.

Q. Do you remember the place? A. I cannot remember the name of the place.

Q. Who was he staying with? A. Why, I went to see mother, and he was there.

Q. How long did you remain there? A. Not very long; I could not state the exact length of time.

147 Q. Two days? A. Well, more than that.

Q. Two weeks? A. Well, not as long as a month, I don't think.

Q. Did you leave him there? A. I don't remember.

Q. Where did you go from there? A. I can't remember whether I came back from there to Philadelphia or Baltimore, or went from there to Texas; but that was the time that I went back on my visit to Texas.

Q. If you went back to Texas, did he go with you? A. I think I came out after he did. I think he went first and I came later.

Q. Then when and where did you next see him, after you saw him in Virginia? A. My memory is that I saw him in Texas again.

Q. At home? A. At the place; yes, sir. I wouldn't say whether it was on the farm or at the depot; I don't remember where he met me; but my memory is that he went out to Vernon, and I came out there.

Q. Then how long did you stay in Texas? A. Not very long.

Q. Two weeks? A. More than that; maybe two months, maybe not so long.

Q. What were you doing there? A. I started to put in some wheat, but I didn't stay long enough to finish it, or put it in.

Q. And where did you go from there? A. I think I came to Washington.

148 Q. When did you get here from Texas on that occasion? A. I could not state that, but it would be the spring after the fall I went out.

Q. You mean the spring of 1892? A. I am not sure as to the date.

Q. After returning then to Washington, when did you next see your father?

Mr. Johnson: Do you mean from Texas?

By Mr. Wilson:

Q. From Texas. You say you went from Texas to Washington. Then I say, when did you see him after your return from Texas to Washington? A. I can't remember seeing him until I met him here last Wednesday.

Q. Did you have any correspondence with him during that time? A. I don't remember that I did. I might possibly have written him.

Q. When you came to Washington from Texas at the time you mention, where did you go when you left Washington? A. I think I went to Baltimore.

Q. And from there where? A. Permanently, you mean, from there?

Q. No; what were your movements? How long did you stay in Baltimore, and where did you go then? A. I don't remember how long I stayed there; but I went from there to Philadelphia.

149 Q. And you have been living in Philadelphia ever since, have you? A. Yes, sir.

Q. What year was that? A. I don't remember the date of that, Mr. Wilson. That is where I went, according to my memory. I don't know that I have traced my steps accurately.

Q. When were you in Texas last? A. Do you mean what date was I in Texas?

Q. Yes, the last time. A. I can't place the date of that, Mr. Wilson.

Q. You cannot say in what year you were last in Texas? A. I told you when I went out there.

Q. You cannot understand my question. I asked you when was the last time you were in Texas before today; what year? A. I could not say the date.

Q. You cannot say the year, either? A. No, sir.

Q. Do you remember that the notes that you deposited in the bank were the notes of Avery and Roth and Moore? Do you remember the name of Avery? A. I believe I remember those names; but I wouldn't remember them as actually being the notes that I received.

Q. How many notes were there? A. My memory of it is that there were two.

Q. Did you receive them at the same time that you received the check? A. My memory is that I did.

Q. Do you remember where you received them? A.
150 Where the check was given to me?

Q. No; where you received the notes? A. I don't believe I ever saw the notes.

Q. They were never in your possession? A. In my hand? I don't believe they were; I don't remember. My memory is that they were not.

Q. You do not remember of ever having seen them? A. That is what I state.

Q. And you do not remember of having handed them to the bank or the officers of the bank to be put to your credit? A. I do not.

Q. Do you remember receiving the check, and having it handed to you—the money, $1200? A. I think I do.

Q. You say you think you do? A. I think I remember getting it.

Q. From whom? A. From father.

Q. Did he hand you the check, or did he hand you the money; and if you got a check, what did you do with it? Have you any distinct recollection about that? A. My memory is that he gave me the check and I deposited it in the bank.

Q. In the Second national bank? A. Yes, sir.

Q. Was he present when you deposited it in the bank? A. I think he was.

Q. Were the notes put to your credit at the same time? A. I think they were. There was a memorandum, I think, made
151 in my book.

Q. Where was Mr. Tracy at that time? Was he in the bank? A. Not that I know of.

Q. Was he in the bank with you and your father at any time that you were here? A. I don't remember that he ever was.

Q. You never saw Mr. Tracy in the bank? A. I have no memory of ever seeing him there.

Q. Did you see him on that occasion—that is, in April, 1891, with your father? A. Did I see him in the presence of father at all?

Q. Yes. A. Why, my father introduced me to him.

Q. Where? A. In the National hotel.

Q. In whose room? A. It seems to me it was in the hallway.

Q. Was that before you got the check? A. I am not positive as to that.

Q. Did you see him afterwards with your father; and if so, where? A. I might possibly have seen him again. I don't remember whether I did or not—I mean at that visit.

Q. I mean with your father, I am asking about seeing him with your father, in company with your father. A. I don't remember that I did.

Q. Was Mr. Tracy living at the National hotel then? A. I was under the impression that he was.

Q. Where did you and your father stop? A. I am not right sure.

152 Q. You have no recollection? A. Not positive.

Q. Have you any recollection at all? Have you any impression about where you stopped—at a hotel or boarding-house, or where? A. At a hotel, I think. It might have been the National hotel.

Q. Well, is it your best recollection that it was? A. I said it might have been.

Q. You and your father stopped together, did you? A. I think we did.

Q. Did you visit Mr. Tracy at his place of business, at his office? A. Did we visit him at his place of business? No, sir. He introduced me to him in the National hotel.

Q. You did not go to his office at all when you were here? A. With father?

Q. Yes. A. No, sir. I might have seen Mr. Tracy at that time either in the hotel or at some office where he was. I am not sure that I did at that visit.

Q. Do you remember going to see him at his office yourself at all? A. Do you mean do I remember ever having seen him at his office?

Q. No; on this occasion in April, 1891? A. No, sir; I am not positive of it. I say I might have gone.

Q. On the occasion of that visit, when did you leave Washington; within a few days after you got the check, or when? A. Yes, sir; I was on here—several days. 153

Q. Do you remember being in Washington in June, 1891? A. June, 1891? That was only a few months after that visit, wasn't it?

Q. That is all; two months, as I count it. A. I don't remember it; I might have been.

Q. Do you remember of depositing, on the 16th of June, 1891, the notes of Roth and Moore in the Second national bank? A. Do I remember depositing those checks on the 16th of June?

Q. Yes; to your credit in the Second national bank? A. Why, I certainly do not.

Q. According to your recollection now, were you here at all in June, 1891? A. I might have been.

Q. Do you remember depositing the note of Avery to your credit at the Second national bank on the 27th of October, 1891? A. I do not.

Q. Do you remember making a deposit in case at the Second national bank on December 23rd, 1892, of $200? A. I do not.

Q. You do not remember those at all? A. No, sir.

Q. Where were you in September, 1893? A. How long would that be after I was here the first time?

154 Q. You were here in April, 1891; so far as we know that was the first time. It would be about two years and a half. A. Well, I think that is the time I made the visit to Texas.

Q. Then you were in Texas at that time? A. I don't say I was; I say I thought that was the time.

Q. As nearly as you can recollect? A. Yes, sir.

Q. Was that your last visit to Texas? A. That is my memory. I only went back to Texas once after coming up here.

Q. At that time your father was at home, was he? A. In Texas, yes, sir.

Q. Where was he living? A. On the farm, I think.

Q. And the family were living in town? Is that so? A. No; it seems to me they were in Virginia.

Q. Will you examine this paper now shown you and state if you recognize the signature to it? A. Yes, sir; that is my signature.

Q. It is dated Vernon, Texas, September 6th, 1893, and purports to be a receipt for $550. You recognize that as your signature to the receipt, do you? A. Yes, sir; I think that is my signature.

Q. After you signed the receipt you sent it to Mr. Tracy? A. Yes, sir.

Q. At what times and in what sums were the moneys therein specified paid to you? A. I cannot remember now.

155 Q. Have you any recollection at all as to the dates? A. No, sir.

Q. Or as to how the $550 was made up—of what sums it was made up? A. No, sir; I cannot tell exactly.

Q. Apart from this receipt, have you any recollection of when you received the money and in what amounts you received moneys from Mr. Tracy prior to that time? A. Before that time how much had I received from him?

Q. Yes; when, and in what amounts? A. Is that the first receipt I ever gave him? Well, I don't remember.

Q. Do you remember when you received the first sum of money from him after April, 1891? A. The date I received the first sum from him? Do I remember that now? I do not.

Q. Do you remember the amount you received from him first? A. No, sir.

Q. Have you any recollection of any specified time when you received any specific sum of money prior to this date? A. I often received money. I could not state the dates of any of it now.

Q. Do you remember how this receipt came to be made out or to be given? A. Why, he sent it to me to sign for money he had given me.

Q. He sent it in this form, in typewriting, for you to sign?

156 A. That is my memory of it.

Q. And you signed it? A. That is my memory of it. It looks like my signature.

Q. And returned it to him? A. Yes, sir.

Q. Did your father know of your having received this money? A. I don't know.

Q. Did any of the family know of your having received this money?

Mr. JOHNSON: I object to that question. It obviously calls upon the witness to state the knowledge of other people, which is not a competent line of examination.

A. I don't know whether they did or not.

Q. Did they know from anything that you had told them? A. I don't remember now.

Q. Had you ever told them that you had received any money from Mr. Tracy? A. Ever told who?

Q. Had you ever told your father or any member of the family prior to the 6th of September, 1893, that you had received from Mr. Tracy any money belonging to the estate of S. H. Turner? A. I don't remember that I did; I might.

Q. Prior to September 6, 1893, was the subject of the moneys belonging to the estate of your uncle and the disposition thereof discussed between yourself and your father, or yourself and any

157 other members of the family? A. No; not that I remember of.

Q. So far as you yourself know, neither your father nor any member of the family knew that you had received any moneys from Tracy? A. I said I didn't know whether they knew it or not.

"Exhibit E. H. T. Cross-examination No. 1," see page 450.

Mr. WILSON: I want to offer this paper, marked "Exhibit E. H. T. Cross-examination No. 1" in evidence, and I want to substitute a copy for the original, and produce the original whenever it is necessary, stating at the same time that their presence here will be duly accounted for farther in the progress of the case. They are produced now to obtain the identification of the witness.

(The above-mentioned paper, or a copy thereof, is filed herewith, marked as above stated.)

By Mr. WILSON:

Q. That is your signature, is it? A. Yes, sir.

Q. You received the money that is therein specified, did you not? A. Well, I sent him a receipt one time (I think it was the biggest receipt I ever sent him) that my memory is included money that I had already sent him receipts for. I stated that here yesterday, or tried to state it.

Q. I will ask you to state definitely, according to your best recollection, whether you had or had not received from Mr. Tracy, prior to the date of that receipt, the sum of $550? A. Well, I am willing to admit that I did; but he might have had another receipt for part of that $550 also.

Q. Will you examine the paper now shown you, purporting
158 to be a receipt for the sum of $65 dated October 18th, 1894,
and state *is* that is your signature appended thereto. A. Yes,
sir; that is my signature.

“Ex. E. H. T. Cross-ex. No. 2,” see page No. 450.

(The above-mentioned paper was thereupon introduced in evidence by counsel for the defendants; and the same is filed herewith marked “Exhibit E. H. T. Cross-ex. No. 2.”)

By Mr. Wilson:

Q. You received the money therein specified? A. Yes, sir.

Q. Where were you when that receipt was given? A. I am not positive where I was.

Q. What is your best recollection? A. I believe I was somewhere up here.

Q. Where you do not know? A. No, sir; I can't name any date and tell you where I was, except a few that I have in my mind.

Q. Examine the paper now shown you, purporting to be a receipt for $30 dated November 5th, 1894. State if that is your signature, and if you received the money that is specified therein. A. Yes, sir; that is my signature.

Q. You received the money? A. Yes, sir.

“Ex. T. M. T. Cross-ex. No. 3,” see page 451.

(The above-mentioned paper was thereupon offered in evidence by counsel for the defendants; the same is filed herewith, marked “Exhibit E. H. T. Cross-ex. No. 3.”)

By Mr. Wilson:

Q. Where were you when you gave that receipt? A. I
159 am not positive. I don't remember just where I was at the
different times I signed these different receipts.

Q. Examine the paper now shown you, purporting to be a receipt for $30, dated December 11th, 1894, and state whether you recognize the signature thereto, and if you received the money that is therein specified? A. Yes, sir; that is my signature.

Q. Did you get the money? A. Yes, sir.

“Exhibit E. H. T. Cross-ex. No. 4,” see page 451.

(The above-mentioned paper was thereupon offered in evidence by counsel for the defendants; the same is filed herewith, marked “Exhibit E. H. T. Cross-ex. No. 4.”)

By Mr. Wilson:

Q. Where were you when that receipt was given? A. I could not state positively.

Q. Examine the paper now shown you, purporting to be a receipt for $50 dated March 29th, 1895, and state whether you identify your signature to that, and if you received the money that is therein specified? A. Yes, sir.

"Exhibit E. H. T. Cross-ex. No. 5," see page 451.

(The above-mentioned paper was thereupon offered in evidence by counsel for the defendants; the same is filed herewith, marked "Exhibit E. H. T. Cross-ex. No. 5.")

By Mr. Wilson:

Q. Where were you when that receipt was given by you? A. That was in 1895, was it not?

Q. Yes. A. I might have been in Philadelphia.

Q. Where were you during the year 1896? A. I think I was in Philadelphia then.

160 Q. Did you get any money from Mr. Tracy during that year? A. It is likely that I did.

Q. Have you any recollection of it at all? A. I don't remember of receiving money on that date.

Q. During that year, I say—at any time during the year 1896? A. No; I have no memory of actually getting money from him in 1896; I don't know. I got this money all along. I can't tell you the dates.

Q. Examine the papers now shown you, purporting to be a receipt for $275, dated July 25th, 1895, and state if you identify that signature and if you received the money that is specified in the receipt? A. Yes, sir.

"Exhibit E. H. T. Cross-ex. No. 6," see page 452.

(The above-mentioned paper was thereupon offered in evidence by counsel for the defendants; the same is filed herewith, marked "Exhibit E. H. T. Cross-ex. No. 6.")

By Mr. Wilson:

Q. Where were you when that receipt was given? A. Philadelphia, I think.

Q. It appears on the face of it, does it not; or does it? A. No, sir.

Q. You were then in Philadelphia. Have you any recollection of receiving that amount—of the circumstances, I mean, how you got it, on what occasion? A. Just what form, it came in?

Q. Yes. A. No sir; I don't know what shape it came in.

161 Q. Examine the paper now shown you, purporting to be a receipt for $125, dated January 21st, 1897, and state if you can identify the signature, and if you received the amount specified in the receipt? A. Yes, sir.

"Exhibit E. H. T. Cross-ex. No. 7," see page 452.

(The above-mentioned paper was thereupon offered in evidence by counsel for the defendants; and the same is filed herewith, marked "Exhibit E. H. T. Cross-ex. No. 7.")

By Mr. WILSON:

Q. This purports to have been given in Philadelphia. You were there then, were you, in January 1897? A. I must have been, from that receipt.

Q. Examine the paper now shown you, purporting to be a receipt for $80, dated February 26th, 1897, and state if you recognize the signature to that paper, and if you received the money therein specified? A. Yes, sir.

"Exhibit E. H. T. Cross-ex. No. 8," see page 452.

(The above-mentioned paper was thereupon offered in evidence by counsel for the defendants; and the same is filed herewith, marked "Exhibit E. H. T. Cross-ex. No. 8.")

By Mr. WILSON:

Q. Examine the paper now shown you, purporting to be a receipt for $130, dated May 17th, 1897, and state if you recognize the signature thereto as yours, and if you received the money specified in the receipt? A. I think I did.

"Exhibit E. H. T. Cross-ex. No. 9," see page 453.

(The above-mentioned paper was thereupon offered in evidence by counsel for the defendants; and the same is filed herewith marked "Exhibit E. H. T. Cross-ex. No. 9.")

By Mr. WILSON:

Q. Will you examine this money order or remitter's receipt for money order, dated November 30th, 1897, for $30, and state if you received the amount of that money order? A. I think I did; 162 but he has a receipt for it, or he ought to have, if I received it. I was not always prompt in sending him receipts. He might send me money and I would send him a receipt a little bit later on.

Q. You received that money; but whether he has a receipt for it or not you do not know? A. I am positive that he has got receipts for all the money I received from him; and my memory is that he either had three or five hundred dollars too much. Now, from the receipts I have seen, my memory would be that it was three hundred dollars.

Q. I am asking you now in regard to the sum of $30 in November 1897. Did you or did you not receive $30 on or about November 30th, 1897, from Mr. Tracy. A. I don't remember. I would not say I did not.

"Exhibit E. H. T. Cross-ex. No. 10," see page 453.

(The above-mentioned paper was thereupon offered in evidence by counsel for the defendants; and the same is filed herewith, marked "Exhibit E. H. T. Cross-ex. No. 10.")

By Mr. WILSON:

Q. What was the date of the last money that you ever did receive from Mr. Tracy? A. I cannot remember that.

Q. You cannot remember that at all? A. No, sir.

Q. You have no idea? You cannot state the year or the month? . Not positively.

Q. Can you approximate it? Will you state as nearly as you can he last money that you received? A. I think it was within a year f his death.

Q. When was that? When did he die? A. I can't remember dates, Mr Wilson.

63 Q. You do not remember the date when he died and you do not remember the date when you received the last money rom him? A. No, sir.

Q. You do not remember the last amount you received from im? A. I do not.

Q. Do you remember the date of the last communication, either ritten or oral, that you had from him? A. That I had from Mr. racy?

Q. Yes. A. No, sir.

Q. When and where did you last see Mr. Tracy? A. I don't remember, Mr. Wilson.

Q. Do you remember where you last saw Mr. Tracy? A. Possibly n Philadelphia.

Q. You are not certain? A. Not positive; no, sir.

Q. Have you any recollection of the circumstances as to the surroundings, the place where you saw him last? A. Well, I can remember seeing him in lots of places.

Q. The last time, I mean. A. I don't remember when I saw him he last time.

Q. Have you any personal knowledge of any assignment made by our father for the benefit of any of the family? A. Have I any ersonal knowledge of it? Do I know it?

Q. Yes. A. No, sir.

164 Q. As a matter of fact, you never heard of it? You never heard of an assignment?

Mr. Johnson. I object.

A. I said I don't know of it.

Mr. Johnson: I object to the witness being asked in regard to the assignment, and object to any answer as to whether he had heard of ny or not.

By Mr. Wilson:

Q. Did you ever tell Mr. Tracy or write to Mr. Tracy of an assignment made by your father for the benefit of your sisters?

Mr. Johnson: One moment. I object to that, on the ground that f the witness is to be asked whether he ever wrote anything, the riting should be first shown to the witness and he should be asked if he wrote it.

By Mr. WILSON:

Q. Examine the paper now shown you, and state if you recognize your signature thereto? A. May I read the letter?

Q. Yes; of course. A. Yes, sir; I wrote it.

Q. When? A. I couldn't tell; I don't remember. It is not dated.

Q. Where? A. I think I was in Philadelphia.

Q. State the time when it was written as nearly as you can? A. I could not do that.

Q. Can you state the year? A. No, sir.

"Exhibit E. H. T. Cross-ex. No. 11 A, B, C, and 11 D." see pages 454-455-456.

(Counsel for the defendants thereupon offered in evidence the above-mentioned letter and envelope, and the same are filed
165 herewith, the three sheets of the letter being marked Exhibit
E. H. T. Cross-ex. No. 11 A, B and C, and the envelope "Exhibit E. H. T. Cross-ex. No. 11 D.")

Mr. JOHNSON: I object to the letter as being incompetent against any of the parties to the suit except the complainant Erle Turner.

By Mr. WILSON:

Q. You wrote the letter? A. Yes, sir.

Q. In the letter you say: "About the property. I wish you would just let it rest as it is for the present." When you wrote that letter what did you understand to be the condition of the property? A. I don't just remember what I alluded to there.

Q. What was the property you alluded to? A. Well, sir, I suppose it was the estate.

Q. Your uncle's estate? A. Yes, sir.

Q. Then I will ask you again what you then understood or supposed to be the condition of that estate? A. At that time, what did I understand the condition of affairs to be?

Q. Yes; at that time. A. I don't remember now.

Q. In that letter you say: "Now, about letting the others have it. I think they have already had more than I have, and are getting the use of it now." What did you mean by that? A. I don't know just what I did mean.

166 Q. Whom did you mean to refer to by the term "others"
when you say "about letting the others have it"? A. I would suppose I meant the other children.

Mr. JOHNSON: I object to the witness drawing suppositions or inferences from the letter, as the letter must speak for itself; and be interpreted by the words used in it; and I shall ask to have stricken out any suppositions or inferences of the witness.

By Mr. WILSON:

Q. When you say, "I think they have all had more than I have," what did you mean by that? A. I don't remember now.

Q. When you said "They are getting the use of it now," what did you mean by that? A. Will you repeat the question?

(The question was read by the examiner.)

A. I can't explain what I did mean.
Q. When you wrote this letter what, so far as you know, had the other children received of your uncle's estate? A. I didn't know that they had actually received anything.
Q. What did you mean when you said: "When papa made an assignment, he put all the property in Wilmer, Lunette and Ashby's name." What did you mean by that?

Mr. Johnson: I object to that as the words of the letter must speak for themselves, and no meaning of the witness in using those words could bind or affect any other party to the cause.

A. I guess I meant what I had heard.

Mr. Johnson: The answer is objected to for the same reason.

167 By Mr. Wilson:

Q. What knowledge had you of any assignment? A. None.
Q. You never had seen it? A. His assignment?
Q. Yes. A. No, sir.
Q. And you never saw any record of it or copy of it? A. No, sir.
Q. Did you have any knowledge that he actually had made any assignment? A. Did I know he had made one?
Q. Yes. A. I did not. I got it from hearsay.
Q. From whom? A. I don't know.
Q. When you said in your letter, "didn't mention me, not even for the $1300 I had loaned him." Did you mean to say that no provision had been made for you in that assignment? A. That I was to get nothing out of the assignment?

(The question was repeated by the examiner.)

A. I guess I did.
Q. How did you know that no provision had been made for you? A. I didn't know it.
Q. Why did you say that no provision had been made for you? Why did you say that to Mr. Tracy? A. I don't know.
168 Q. This letter was written long after you were here in Washington, in 1891, was it not? A. I think it was.
Q. Long after he had paid you the $1200?

Mr. Johnson: Who had paid him the $1200?
Mr. Wilson: His father.

By Mr. Wilson:

Q. Long after your father had paid you the $1200? A. Yes, sir; I think it was.

Q. Did your father, when this letter was written, owe you $1300? A. No, sir.

Q. He had paid it? A. He didn't owe me anything.

Q. Had you loaned him $1300? A. No, sir.

Q. This (indicating the letter) was not true, then? A. I don't think it was.

Q. Why did you write it? A. I can't just remember now. I think Tracy had asked me what I did with the money at one time, and I didn't want to let him know I had thrown it away, and I may possibly have told him I loaned it to father.

Q. You did not want him to know what you had done with what money? The money your father had paid you, you mean? A. Yes, sir.

Q. This was written in order to make Mr. Tracy believe that you still had that money? A. I don't know that it was. I say I am
under the impression that I at one time told Mr. Tracy about
169 the money I had, and he asked me what I did with it; and
I might have told him that I had loaned it to father; I don't remember whether I did or not. I think that is it—something like that.

Q. Did you have at that time an order for that amount received from your father—an order on Tracy for that amount?

Mr. Johnson: What amount.

Mr. Wilson: The $1300.

A. No, sir.

Q. When you said in this letter, "I have his order for the amount in your notes," was that true? A. I think I alluded to the Maryland Avenue lots. I had an order on that.

Q. That is the one that was lost, is it? A. Yes, sir; the one I misplaced some way.

Q. You never sent it to Mr. Tracy? A. I showed it to him in the original, and I gave him a copy of it.

Q. You kept the original? A. That is my memory of it.

Q. Was that an order for a specific sum of money? A. I think it was.

Q. For how much? A. It was my memory it was $2500.

Q. That was an order in your favor given by your father on Mr. Tracy, was it? A. That is my memory of it; yes, sir.

Q. When and where did you get that order? A. Why, some time
in 1891.

170 Q. Where? A. I don't remember. I am under the im-
pression that he sent it to me after I left here. That is my memory of it.

Q. And you sent a copy of it to Mr. Tracy, but never got it? Nothing was paid on it? A. Not unless you consider those receipts as having been paid on it.

Q. You say, "This is all I will ever get, as I would not make any fuss about the Vernon property." What did you mean by that? What was there to make a fuss about in respect of the Vernon property? A. I don't remember now what I meant by that, then. Read hat again, Mr. Wilson.

(The last question and answer were read by the examiner.)

Q. That is your answer? A. Yes, sir.

Q. In your letter you say: "It is no more than right that I should have this, as they have all the rest, and are having the benefit of it now." Who did you refer to by "they"? A. Why, the children, I suppose.

Q. What did you mean when you said, "they have all the rest"? A. I can't explain that now.

Q. What did you mean by saying: "They are having the benefit of it now." What did you mean by "it"? A. Well, I think Mr. Tracy had told me that he had turned over some of this money to father, and I thought that was it. I am not positive that he told me, but I have that idea in my head. I don't know whether 171 it came from him having told me, or having found out that the money was not left to him at first, as I supposed it was. I can't tell whether Mr. Tracy told me he had turned over this money I rather think he did—or it might have come from the fact that I would draw that belief from knowing that he had money, and I understood that he originally inherited it.

Q. The "it" then meant the money of your uncle's estate did it? That is what you were writing about, was it not? A. I presume it did.

Q. Then what did you mean by saying that they had had the benefit of that? A. Well, they were having the benefit of what had been turned over to father.

Q. How? A. I was not having the benefit of it.

Q. I am not asking about you. I am asking about them. You stated that they had had the benefit of it. I ask you how? A. Well, I don't know just how.

Q. When you wrote this letter, what had you been told by Mr. Tracy, by your father, or by any one at all, as to what your uncle's estate consisted of, and what was its value? A. Nothing.

Q. You knew absolutely nothing about it? A. At the time I wrote that letter?

Q. Yes. A. I don't know what time I wrote that letter. The first absolute knowledge I had of what the estate consisted of and 172 the amount of it was when I received the list of notes.

Q. Until you received that list of notes that you have spoken of you did not know and had not been informed by Tracy or by your father how much money or how much property had gone into the hands of your father. Is that so? A. How much Tracy had given father?

Q. Yes. A. No, sir.

uncle

Q. You first knew that the will of your father provided for you and your brothers and sisters, as I understood you to say, in 1891? A. That is my memory, that I learned it about that time.

Q. And from 1891 then until you got this list, a little while before this suit was brought, you did not know what your uncle's estate consisted of. Is that so? A. I stated the first knowledge I had of the amount of the estate and what it consisted of was when I received that list.

Q. Before you received that list, did you know that any part of the estate had gone to your father? A. Before I received this last list?

Q. Yes. A. Did I know it?

Q. Yes. A. I can't say that I knew it.

Q. You had not been told so by your father? A. I think Mr. Tracy told me.

Q. Did he tell you how much had been paid to your father? I understood you to say that he did.

Mr. JOHNSON: Do you mean that he said it at this examination?

173 Mr. WILSON: Yes.

Mr. JOHNSON: No, sir; he never said so.

Mr. WILSON: Well, I ask him now.

The WITNESS: What was the question?

(The question was read by the examiner.)

A. The amount that had been paid to my father?

Q. Yes. A. No, sir.

Q. Approximately. Did he name any figures to you? A. I don't remember that he did.

Q. Did he tell you how much money he had of the estate in his own hands? A. How much left at that time?

Q. Yes. A. No, sir.

Q. Did you ask him? A. I don't remember asking him.

Q. Did you ever ask your father how much money of the estate he had received and what he had done with it? A. Not at that time.

Q. Did you ever, before this suit was brought? A. No, sir.

Q. You say you have no recollection of the date when this letter was written, which is marked "Exhibit E. H. T. Cross-ex. No. 11." Is that so? A. Yes, sir.

Q. In your letter, after referring to the assignment, you say to Mr. Tracy, "You speak of the woman here. I have not seen her, and don't care to," etc. Referring to that incident, will you state if you cannot give a more definite answer as to the time when

174 that letter was written? A. I said I could not place the date of it.

Q. Well, after reading the letter again, do you say you cannot give the year when that letter was written? A. No, sir; I don't think I can.

Q. I do not want to go into this matter, but there are these letters here that you wrote to him and that he wrote to you about this woman, and they will certainly enable you to say something about the year.

Ir. JOHNSON: We do not object to your going into the matter ut the woman.

By Mr. WILSON:

. Look at the envelope now shown you, dated February 28th, 8, and state if you recognize your writing on that envelope, and hat envelope was included, sent, by you, at that time or about t time? A. That is my writing on the envelope. I don't know t it contained that letter when it was sent.

. Did you have trouble with a woman about that time, about time that that envelope bears date? A. I had trouble with a man. I don't think it was that date, though.

. Not in February, 1898? A. No, sir.

. Examine the paper now shown you, purporting to bear date rch 9th, 1898, and state if it was written by you, and if you ognize the signature; and state if that enables you to say when had trouble with a woman? A. May I read it?

. Certainly. A. (After examining letter.) Yes, sir; I wrote this.

5 Q. After reading that, can you state when the letter, Exhibit E. H. T. No. 11, was written? A. Can I state, from ding this, when that letter was written?

Q. Yes. A. No, sir; I cannot.

Q. Does it refer to the same woman? A. It refers to the same man.

Q. Did you have any other trouble in any other year with the me woman? A. Well, not that I recall just now, or at any rate thing that I knew he knew anything about.

Q. Have you any doubt yourself that this was written in 1898, out the time of that other one? A. These two must have been itten something near the time. It was about the same woman. ey both allude to the same woman. There was no other woman.

Q. That was in March and this was in February? A. Yes.

"Exhibit E. H. T. No. 12 A, B, C, D, F," see pages 457–458. "Exbit E. H. T. No. 12 G," see page 459.

(The letter just identified by the witness was thereupon offered in idence by counsel for the defendants, together with the envelope closing the same, and the same are filed herewith, the six sheets the letter being marked "Exhibit E. H. T. No. 12 A, B, C, D, E d F" and the envelope "Exhibit E. H. T. No. 12 G.")

Mr. JOHNSON: I object to the letter as incompetent and immateal to any issues in the cause, and especially as inadmissible against ny of the parties other than Erle H. Turner.

76 By Mr. WILSON:

Q. Will you examine the paper now shown you, purporting to be ated "Friday p. m." directed to Mr. Tracy, and see if that is in our handwriting? Also examine the envelope with that and state you recognize the superscription. A. Yes, sir; I wrote that etter.

"Exhibit E. H. T. No. 13 A, B & C," and Ex. E. H. T. No. 13 D," see page- 460–461.

(The letter just identified by the witness was thereupon offered in evidence by counsel for the defendants, together with the envelope enclosing the same, and the same are filed herewith, the letter being marked "Exhibit E. H. T. No. 13 A, B and C," and the envelope "Exhibit E. H. T. No. 13 D.")

Mr. JOHNSON: I object to the letter as incompetent and immaterial to any issues in the cause, and especially as inadmissible against any of the parties other than Erle H. Turner.

By Mr. WILSON:

Q. Please examine another letter now shown you, purporting to have been written on Sunday, and in an envelope bearing date March 21, 1898, and state if you recognize that? A. (After examination.) Yes, sir.

Q. You recognize that was a letter written by you to Mr Tracy? A. Yes, sir.

"Exhibit E. H. T. No. 14 A, B, C, D, E, & *D*, see page- 462–463. "Exhibit E. H. T. No. 14 G," see page 464.

(The letter just identified by the witness was thereupon offered in evidence by counsel for the defendants, together with the envelope enclosing the same, and the same are filed herewith, the letter being marked "Exhibit E. H. T. No. 14 A, B, C, D, E and F" and
177 the envelope "Exhibit E. H. T. No. 14 G.")

Mr. JOHNSON: I object to the latter as incompetent and immaterial as to any issues in the cause, and especially as inadmissible against any of the parties other than Erle H. Turner.

By Mr. WILSON:

Q. Please examine the letter now shown you, dated April 4th, and state if you recognize your signature and the writing on the envelope.

A. Yes, sir; I do.

"Exhibit E. H. T. No. 15 A & B," see page 465. "Exhibit E. H. T. No. 15 C," see page 466.

(The letter last identified by the witness was thereupon offered in evidence by counsel for the defendants, together with the envelope enclosing the same, and they are filed herewith, the letter being marked "Exhibit E. H. T. No. 15 A and B" and the envelope "Exhibit E. H. T. No. 15 C.")

By Mr. WILSON:

Q. I asked you the date of the last letter you wrote to Mr. Tracy and the date of the last letter you received from him, and I understood you to say you did not remember? A. No, sir.

Q. When you wrote the letter I have already questioned you about, marked Exhibit E. H. T. No. 11, and when you said to Mr. Tracy in that letter, "I wish you would let it rest as it is for the

present," what property belonging to the estate in which you were interested did you then know or understand was in the possession of Mr. Tracy? A. I didn't know what property. I think that letter was after he had written me that this woman was trying to get some money out of him and was annoying him very much
178 and called forth these letters.

Q. Independent of the letters being written, what, in dollars and cents, did you know from Mr. Tracy he had in his hands? A. I did not know.

Q. Did you know about how much? A. No, sir.

Q. Had you any notion in your own mind of what the amount was, whether it was $1,000 or $10,000 or $20,000? A. Did I have at that time?

Q. Yes. A. I don't think I did.

Q. You had no notion whatever? A. I don't think I did, at that time.

Q. When did you get the first definite notion, or when did you get the first knowledge, as to the amount that he had in his hands? A. As to the amount he received from my uncle's estate?

Q. No; as to the amount he had in his hands when you wrote those letters, or this particular letter (Exhibit E. H. T. No. 11) to him.

Mr. JOHNSON: He has already answered that several times Mr. Wilson, that he did not know and had no information at that time.

Mr. WILSON: I want to ask him again.

A. Why, I don't know.

Mr. WILSON: The letters from Mr. Tracy to him, Mr. Johnson, of which you gave us copies—are all those in evidence?

Mr. JOHNSON: Yes, sir.

179 Mr. WILSON: Every one of them?

Mr. JOHNSON: I cannot be certain about that.

Mr. WILSON: You intend to give me a copy of all you had?

Mr. JOHNSON: Yes.

Mr. WILSON: If there are any that are not in, you will put them in?

Mr. JOHNSON: I intended to put in all the letters from Tracy to Turner and all the scraps of letters, and I think I did, but I won't be certain about it.

Q. Do you say and wish to be understood that you did not receive from Mr. Tracy, either verbally or in writing, any definite information as to the money of the estate that was in his hands? A. I don't remember that he ever told me the amount.

Q. In one of the letters in evidence, dated November 20, 1893, Mr. Tracy speaks of the ground upon which he had loaned the "estate money" and some of his *won.* What did he tell you as to the ground upon which he had loaned the money of the estate, and where was it situated? A. Read all he says about that. Read the letter.

Q. The letter is as follows: "Dear Erle: Your two letters at hand. I cannot send you any more money yet. The ground upon which I loaned the estate money and some of mine would not, I fear, bring enough to get us out clear if sold now, and so I will have to wait for better times, which I am afraid will be slow in coming. The panic here has been the worst ever known and is still on. I look for a still further decline in real-estate values." Do you want me to read the rest of it? A. That is enough. Now read the question.

The question was read as follows:

180 "Q. In one of the letters in evidence dated November 20, 1893, Mr. Tracy speaks of the ground upon which he had loaned the 'estate money' and some of his own. What did he tell you as to the ground upon which he had loaned the money of the estate, and where was it situated?" A. I don't know that he ever told me anything except that.

Q. Did he ever mention the property on Maryland avenue? A. Yes, I think he did. You mean the lots on Maryland avenue that I had an order for?

Q. Any property on Maryland avenue. A. Yes, sir; I think he did.

Q. Did he give you any information as to any other property which he held for the estate, or did he ever mention any other property in which the money of the estate had been invested? A. Any special property?

Q. Yes. A. I don't remember that he ever named any special property, any more than to say it was in real estate.

Q. He did not designate what? A. No, sir.

Q. In the letter from Mr. Tracy to you, dated May 8th, 1894, he wrote:

"I had all the money belonging to the estate in hand, and was ready to turn it over to your father, but you remember you and your mother raised a racket. I consulted a lawyer, and he advised me to hold back."

Do you know of any objection that you had raised or that
your mother had raised, to your knowledge, to the turning
181 over of money to your father? A. I don't recall any
now.

Q. What does he refer to there? Have you any recollection whatever? A. No, sir.

Q. He says further: "The money was then invested, and you have drawn the interest as long as it was paid up to the time the panic came on." Was it a fact that you had drawn the interest on any particular sum of money up to that time, so far as you knew? A. I guess he was speaking about those Maryland Avenue lots again.

Mr. Johnson: I object to the witness stating what he guesses the man was speaking about in a letter, especially in response to a question which asks him whether he was drawing a definite interest on a definite sum.

A. Read the complete letter to me, Mr. Wilson.

Mr. **Johnson**: It is not the letter. I objected to the question and answer.

By Mr **Wilson**:

Q. In the same letter he says he has no money in hand belonging to the estate "though I have been trying my best to collect the interest on the notes." When you received that letter, and after you received that letter, did you have any information or knowledge of any money that he had or that he had invested for the estate except in respect of the Maryland Avenue lots? A. I didn't know what he had of the estate.

Q. Whatever money you received from Mr. Tracy, you received
as one of the parties entitled to it under your uncle's will, did
182 you not, and did you not so understand? A. I so worded my
receipts.

Q. And you understood and knew that your brothers and sisters were entitled to receive just what you did, did you not? A. I supposed they were.

Q. Did you make any inquiry about their interests of Mr. Tracy or of your father? A. No, sir.

Q. Did you make any effort to protest their interests? A. Any effort?

Q. Yes. A. I can't say that I did.

Q. You looked out for yourself entirely? A. Tracy told me, or I was under the impression that Tracy had turned over some of this money to father.

Q. When did you get that impression? A. I don't know just when I got it. It was after 1891.

Q. Well, soon after 1891? A. Yes.

Q. Did you make any inquiry of your father or of your mother or of any of your brothers and sisters as to what they had received or how your brothers and sisters were protected? A. I don't think I did.

Q. You received altogether from Mr. Tracy, as we figure it up here from these receipts about $1400? A. That is what I said——

Q. Whatever the amount that is shown by those receipts,
183 you received that from Mr. Tracy, in respect of your interest
in the estate. A. I said I would acknowledge that amount,
but I did not think it was so much.

Q. And you do not know of your sisters or your brother having received anything whatever in respect of their interest in the same estate. Is that so? A. Do I know that they actually received anything?

Q. Yes. A. No.

Q. Since 1891 you have looked out exclusively for your own interests. Is that so? A. You might put it that way.

Q. You have not concerned yourself about them at all? A. Well, I have.

Q. How? A. I cannot say how, but I have.

Q. What have you done either to ascertain what their interests are or to protect them?

Mr. JOHNSON: I object to that question as it is not shown that the witness was at any time the agent authorized to act for any of the other complainants.

Mr. WILSON: No; he was only a brother.

A. I can't state.

Q. You are one of the complainants in the bill here and made affidavit to it, did you not? A. Yes, sir.

Q. In the bill it is alleged that "said Tracy retained in his possession down to his death, with the exception of the $1400
184 aforesaid, the entire trust fund, principal, interest and profits
and the same have come into the possession of the defendants, his executors." On what information did you make that statement? A. I didn't have any positive proof of anything else.

Q. You did not know that any part of the entire trust fund had been paid to your father? A. Positively know it? How could I know it?

Q. I am asking you questions, you know. You are not asking me. A. I told you at one time that I was under the impression that Mr. Tracy told me he turned over some of it to my father, but still I did not actually know it.

Q. This bill is sworn to by you on the 8th of June, 1899, and at that time you had no information, as I understand, that any part of the trust fund had been paid over to your father? A. Oh, no; I didn't say that. You asked me if I knew it and I told you that Mr. Tracy had told me that he had done so, but I didn't know it.

Q. But you say here that Mr. Tracy retained it all, the entire fund, principal, interest and profits, and that it went into the hands of his executors. Did you not know at that time, from information that you had received from Tracy, that part of the trust fund had actually been paid to your father? A. I told you Mr. Tracy told me so. I did not know whether he did.

185 Redirect examination.

By Mr. JOHNSON:

Q. Did you understand from your counsel who drew this bill that you were obliged to believe Mr. Tracy's statement? A. No, sir.

The further taking of these depositions was thereupon adjourned until Monday, May 20th, 1901, at 11 o'clock.

186 WASHINGTON, D. C.,
MONDAY, *May* 20th, 1901—11 o'clock a. m.

Met pursuant to adjournment.

Present on behalf of the complainants, Mr. Johnson.

Present on behalf of the defendants, Messrs. Nathaniel Wilson and Clarence Rich Wilson.

Present, also, George W. Gray, Esq., one of the defendants, in person.

ERLE H. TURNER, the witness under examination when the adjournment was taken, was recalled for further redirect examination.

By Mr. JOHNSON:

Q. Mr. Turner, I show you a part of a letter purporting to be signed by Philip A. Tracy, and ask you to state in whose handwriting it is? A. Mr. Tracy's.

Q. Do you know where the rest of the letter is? A. No, sir.

Mr. JOHNSON: I offer this paper in evidence.

"Exhibit Erle H. Turner Redirect No. 1," see page 467.

(The above-mentioned paper is filed herewith, marked "Exhibit Erle H. Turner Redirect No. 1.")

By Mr. JOHNSON:

Q. On the back of this letter are written the words: "The date of this can be gotten by an inquiry at above address." In whose handwriting are those words? A. My own.

Q. I will ask you to state whether you have produced here all the letters and parts of letters from Mr. Tracy which you have or
187 have been able to find? A. All that I could find; yes, sir.

Mr. JOHNSON: Counsel for the complainants calls upon counsel for the executors to produce the copy of an order by T. M. Turner upon Philip A. Tracy to pay to Erle H. Turner the proceeds of the sale of the Maryland Avenue lots, and also the copy of the written acknowledgment by Tracy of the interest of Silas Turner's estate in the Maryland Avenue lots.

Mr. WILSON: I will examine the papers, and see if we have them.

By Mr. JOHNSON:

Q. Mr. Turner, you have stated that in giving receipts to Mr. Tracy you were not always punctual, and that he frequently rebuked you for your negligence in that respect. I would like you to state whether in that connection at any time Mr. Tracy ever said anything to you with reference to the papers which he kept relating to the S. H. Turner estate; and if he said anything, state the substance of what he said as nearly as you can.

Mr. WILSON: I object to that question as immaterial and incompetent.

A. Why, he said that I must be more punctual in sending receipts; that it was very important that he should have these receipts; and at one time he further stated that if at any time he should die, he kept all these papers or receipts relating to the estate together in a drawer or a box or somewhere—I don't know exactly where—and there would be no trouble about it at all to settle it up in case of his death.

188 Q. In Mr. Tracy's letter of May 8th, 1894, being Exhibit Erle H. Turner No. 3 he states: "I had all the money belonging to the estate in hand, and was ready to turn it over to your father; but you remember you and your mother raised a racket. I consulted a lawyer, and he advised me to hold back." I want you to state, first, whether or not you and your mother at any time saw Mr. Tracy together? A. No, sir.

Q. Were you and your mother ever present in Washington together? A. No, sir.

Q. Have you any knowledge of your own that your mother ever at any time saw Mr. Tracy? A. No, sir.

Q. Have you any knowledge of your own that your mother "raised a racket," or did or said anything to Mr. Tracy on this subject? A. No, sir.

Q. Now I will ask you to state whether or not you yourself at any time "raised a racket" or did or said anything to Mr. Tracy with reference to a contemplated turning over of the estate of Silas Turner to your father? A. No, sir.

Q. Did Mr. Tracy ever at any time propose to you to turn over any part of the estate to your father? A. No, sir.

Q. Mr. Turner, when you first went to Philadelphia, for what special purpose did you go there? A. You don't mean employment, do you?

Q. I mean for what purpose did you go there? A. I went there to be treated.

189 Q. To be treated for what? A. For a nervous impediment in my speech.

Q. Did you take that treatment? A. Yes, sir.

Q. Please state if it was daily or otherwise; and if daily, how often and how long a day and during what period of time? A. About three hours in the morning and two or three in the afternoon.

Q. Was that daily? A. Yes sir.

Q. For how long did you continue that treatment? A. A month or two. I do not remember how long.

Q. After you went back to Philadelphia did you take it up again? A. Yes; I resumed it for a little while.

Q. About how long? A. Not very long that time.

Q. Who gave that treatment? A. A man named Johnson.

Q. Was he a medical man? A. Not a graduate in medicine, so far as I know.

Q. Was that his business? A. Yes, sir; that was his business.

Q. Were there others there undergoing the same treatment? A. Yes, sir.

Q. Did you have to pay for that treatment? A. Yes, sir.

Q. Do you remember how much? A. I think it was $75.

190 Q. $75 for all of it, or for a period of time? A. I think that was all of it. I think that was the fee. You paid a fee and stayed as long as you wanted. I don't remember just exactly.

Recross-examination.

By Mr. Wilson:

Q. Mr. Turner, on redirect examination you have been asked if you produced here all the letters that you received from Mr. Tracy which you could find. Were there a great many letters that you had received that you could not find? A. Yes, sir; I received more letters from him than I have here.

Q. Did you keep up a constant correspondence with him from the time you went to Philadelphia? A. A constant correspondence?

Q. Yes. A. Well, I don't remember what time I received the first letter from him; but after I heard from him the first time I heard from him often. I could not state that I heard from him at any regular periods.

Q. Very frequently? A. Yes; I heard from him quite often. There could have been times when I did not hear from him, perhaps, for some time.

Q. What would you do with the letters that you received from him? A. The ones I have not produced?

191 Q. Well, generally, with the letters that you received. Did you have any place to keep them? A. No, sir; I carried them in my pocket or left them in my trunk, and they were thrown away or destroyed with other letters.

Q. Where did you find the letters that you have produced here? A. In my pockets and trunk and bureau drawers. I could not just state where I found them.

Q. Did you make a search for all that you had received? A. Yes, sir.

Q. When did you make that search? A. I made several searches.

Q. When was the first one? A The first one I remember was when I had orders from Mr. Johnson to look up every letter I could find.

Q. That was before this bill was filed, was it? A. I presume it was.

Q. And you looked, and you found these letters that are here? A. Yes, sir.

Q. And what did you do with them? A. I either sent them or brought them to Mr. Johnson.

Q. As I understand you to say, what letters you have here and what papers you have produced are the only letters and the only papers that you could find now that you received from Mr. Tracy? A. Yes, sir.

192 Q. You are not able to state when you received this letter which is now marked "Exhibit Erle H. Turner Redirect No. 1"? A. No sir.

Q. Can you state about the time? A. No, sir.

Q. Can you tell us what year it was? A. No, sir.

Q. In the letter request is made for $125. Do you remember receiving $125 from Mr. Tracy, just that sum? A. No, sir; I do not remember receiving it. I do not doubt that I did.

Q. I suppose this letter was written about the time that a receipt was requested of you for that money, then? A. Why, read the letter, where it speaks of it. I have not read it.

Q. Just read it yourself. A. (After examining letter.) Why, this is a request for a receipt.

Q. Did you comply with that request? A. I don't remember; I suppose I did.

Q. You do not remember either receiving the money or sending the receipts? A. You mean remember the act of sending the receipt or writing the receipt?

Q. You have heard the question. A. No, sir; I don't remember. I suppose I sent the receipt, and I am willing to acknowledge that I received the money.

Q. Did you receive $125 in one sum on more than one
193 occasion from Mr. Tracy? A. I can't remember.

Q. On the first line of this paper it is stated: "The property was sold last month, and did not sell for enough to pay the first mortgage." What property is referred to there? A. I cannot state positively. I think he told me or wrote me that he had, it seems to me, loaned some money on property, and that he had lost it. I know he wrote me at one time that he had lost a great deal of money during the panic.

Q. Where did you understand the property referred to was situated; in the city of Washington? A. I did not know.

Q. You had no idea where it was situated? A. No, sir. I would suppose it was here.

Q. Did he ever mention any property situated in any particular part of Washington in which he had invested money? A. No, sir; I cannot state that he did.

Q. Referring to the letters which have been introduced in evidence, signed by you, I understood you to say that the signature to the letters was yours, and that the letters had been written by you; is that correct? A. Yes, sir.

By Mr. Johnson:

Q. In what business are you engaged now? A. In the laundry business.

Q. How long have you been engaged in it on your own account?
A. I have worked this way for over a year now. Would you
194 term the percentage basis on your own account? I worked
for another laundry before.

Q. Is that the basis on which you are now working? A. Yes.

Q. How long before that had you worked on a salary? A. Five or six years is my memory; quite a long time. When I first started in I went on a commission basis, and then I was on a salary awhile, and then I was on a salary until I started the way I work it now.

By Mr. Wilson:

Q. You are in business now for yourself, in the laundry business, are you? A. Yes sir; I consider I am in business for myself. Shall I explain how?

Q. Well, answer my question; that is the best way to explain. In what name is the business conducted? A. The Liberty laundry.

Q. Do you own it yourself? A. I have no plant.

Q. What is your business, then; how is it conducted? A. I have made arrangements with a little plant about forty miles up the State, and I collect my work in Philadelphia and send it up and it is returned to me; and then I settle with them at a certain percentage on what my lists call for. I take this work out and deliver it to my customers, and collect from them, and then I pay them a percentage on the total amount of my week's work, and send out this work and deliver and collect it. Of course I have to stand all the bills; and if a bill is not paid I lose it.

195 Q. What are your average receipts? A. Well, I am running over $50 a week.

Q. Have you any capital invested in the business? A. A horse and wagon.

Q. One horse and wagon? A. Yes, sir.

Q. Have you been engaged in any other business since 1891? A. Yes, sir.

Q. What? A. The grocery business.

Q. Where? A. In Philadelphia.

Q. To what extent and how were you engaged; as a proprietor? A. Well, that brings that woman into it.

Q. You can just state the general facts about it. A. I ran the business; yes, sir.

Q. In whose name? A. In my own name.

Q. Where was your place of business? A. In Philadelphia?

Q. Where? A. On Ridge street.

Q. Was it a general grocery business? A. Just a small grocery store.

Q. Did you own the stock? A. I bought it with my money and hers.

Q. How much did you pay for it? A. I don't remember; not very much. We just bought an inventory of the stock.

196 Q. About how much; state approximately? A. The stock on hand I don't think amounted to over three or four hundred dollars.

Q. Did you buy any additional stock? A. Yes, sir.

Q. How much? A. Well, I couldn't tell; just from week to week. I wouldn't have any way of knowing. Just as fast as I sold out I would stock up again.

Q. How much of your own money did you put into it? A. I think it was a couple of hundred dollars—$250, maybe.

Q. Altogether? A. Yes, sir.

Q. Not over $250 altogether? A. I don't think I did.

Q. Where did you get that money? A. From Mr. Tracy.

Q About when did you begin that business? A. I could not tell the date.

Q. When did you quit? A. My memory is I ran it nearly a year.

Q. What became of the business? A. I made an assignment to her.

Q. What did you do then, in the way of business? A. I think I then got employment at Wanamaker's.

Q. And continued there how long? A. A little while; and then, when I left there, I went right into the laundry business.

197 Q. And you have been in that ever since? A. Yes, sir.

ERLE H. TURNER,
(*By the Examiner, by Consent.*)

THOMAS M. TURNER, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, testified as follows:

By Mr. JOHNSON:

Q. Mr. Turner, where do you reside at present? A. In Willbarger county, Texas.

Q. You know the four complainants in this suit, I believe, Erle H. Turner, Wilmer Turner, Ashby Turner and Lunette Turner? A. Yes, sir.

Q. What is your relation to them? A. I am their father.

Q. Of what part of the country are you a native? A. Virginia.

Q. Did you know Silas H. Turner? A. I did.

Q. What relation were you to him, if any? A. I was his brother.

Q. Did you know Philip A. Tracy? A. I did.

Q. In what part of the country did you first know him? A. I first knew him in Fauquier county, Virginia.

198 Q. Did he reside there? A. He did then.

Q. When you were a youth did you live in a city or in an agricultural district? A. I lived on a farm.

Q. Did you work at farming? A. Yes, sir.

Q. In Virginia? A. Yes, sir. I was raised on a farm.

Q. What is your age now? A. Sixty-seven; I will be sixty-eight in August.

Q. What was the first business in which you were engaged, and where? A. The first that I remember, I was teaching some country schools in Fauquier county, Virginia—I mean after I grew up to that age when I could teach school. Formerly I had worked on the farm.

Q. Did you teach school there for yourself or for any one else? A. For myself.

Q. What did you engage in after that? A. After that I taught school in an academy at Upperville.

Q. Who conducted that academy? Who was the principal of it? A. J. W. Armstrong.

Q. What did they call the academy? A. The Upperville Military Academy.

Q. About how long did you teach there? A. Several years; I cannot remember the exact time.

199 Q. Were you a young man at the time? A. Yes, sir; a young man.

Q. Did you know Tracy at that time? A. I met him while I was teaching there, at some parties that we had, or balls, or whatever you may term them.

Q. How was he engaged at that time? A. He was clerking then in a store on the railroad that ran from Manassas up to Front Royal, at a station called at that time, I believe, Markham, if I remember properly. It has been a long time ago.

Q. Was that the nearest railway station to Upperville? A. That was the nearest station to Upperville.

Q. Whatever the name of it was, it was the nearest to Upperville? A. Whatever the name of it was; I think it was Markham.

Q. After you stopped teaching there, where did you go or what did you do? A. I went to Memphis, Tennessee, to try to establish a school there.

Q. Do you mean for some one else or for yourself? A. For myself.

Q. How long were you so engaged? A. I was there a few months; I cannot remember the exact time.

Q. Did you establish the school? A. I did not; I had not means sufficient to carry it out.

Q. What did you next do? A. I then went to Missouri.

Q. What part of the State? A. Howard county. I went to a small town called Boonsboro.

200 Q. Did you engage in any business there? A. I had a cousin who was a merchant there, and I engaged in business with him—book-keeping for his business.

Q. Was that his individual business, or was there a firm? A. There was a firm. He was in partnership with a man named Graves.

Q. What was the name of the firm? A. Graves and Turner, I think, sir.

Mr. Wilson: I object to all the foregoing as immaterial and irrelevant, except the time and place of his birth.

By Mr. Johnson:

Q. Do you remember how long you continued there? A. I could not state the exact time, sir; a year or two.

Q. Then did anything occur in the country to change your relations to that business? A. The war came on, sir.

Q. The civil war? A. The civil war; yes, sir.

Q. Did you take any part in it? A. I did.

Q. On which side? A. The Confederate side.

Q. In that service did you remain during the war? A. Yes, sir;

I remained, and was finally surrendered and received my parole at Shreveport, Louisiana, after the general surrender.

Q. That was at the close of the war? A. Yes, sir; at the final close of the war.

201 Q. Were you in the service during the entire war? A. Yes, sir.

Q. You did not engage in any civil business during that time? A. No, sir.

Q. When you were paroled at Shreveport, where did you go? A. I went from there to Minden, Louisiana, about thirty miles distant.

Q. And in what year? A. I believe it was in 1866.

Q. Was it the same year as the surrender? A. Yes, sir. Now, I am not positive about that. It was 1865 or 1866.

Q. How long did you remain at Shreveport after the surrender? A. Oh, a short time only.

Q. Months or weeks, or what? A. Not a month, sir; I don't suppose over a week, if that.

Q. I will ask you to state what was your first employment in Minden? A. I was clerking for a merchant there, I believe the first one that established a store there after the war; I think it was.

Q. Do you remember the name? A. Yes, sir; Samuel Archinard, a French name.

Q. What character of store was it? A. A general store, sir. I believe he kept all the different kinds of goods in it.

202 Q. Do you remember how long you *you* remained in that business, clerking in that establishment? A. Not exactly, sir, several months.

Q. Then what did you do? A. I had sold my horse in the meantime, and the equipment that I had; and with what money I got for clerking for this gentleman I went to Shreveport and bought a stock of goods for myself. I met some men from St. Louis there who let me have a lot of goods on time. I paid them what money I had, and they let me have a lot of goods then on time; and I carried those goods to Minden, Louisiana, and put up a store of my own there. I would send them money each week, as I sold, to pay the men that I had bought them from.

Q. Had you married yet? A. No, sir.

Q. Then what other business, if any, did you engage in while you were keeping that store at Minden? A. That fall I rented a steamboat landing on Bayou Dorcheate. This bayou was about three miles from Minden; and at certain portions of the year, when the water was high enough, the steamboats came to those landings, bringing goods to the town. They had no railroad. It was periodical navigation.

Q. Was that business successful? A. Yes, sir.

Q. How long did you continue that? A. I continued that one year.

Q. Do you mean the steamboat landing? A. Yes, sir.

203 Q. Then what became of it? A. The landing was rented then by another man. A company owned the landing, and

they gave him the place, he being a particular friend of theirs; and I had to give it up. I tried to rent it, but did not succeed.

Q. Your original lease was for one year? A. Only one year. They would not lease it but for a year at a time.

Q. When did you marry? A. I married in 1867.

Q. What was your wife's maiden name? A. Carrie Heath.

Q. Had your wife been engaged in any business at the time of your marriage? A. She had been teaching, sir; and was teaching then, I believe.

Q. Did she continue to teach any time after your marriage? A. Yes, sir; she taught after we were married.

Q. For how long? A. I cannot remember; a year or two perhaps. It was a year, at any rate. I do not remember the exact time.

Q. What home did you and your wife occupy at Minden? A. When we were first married we lived with her mother for a time. I cannot say, sir, the exact length of time; perhaps a year.

Q. Then what other arrangements, if any, did you make? A. I then bought a farm of 160 acres adjoining the town, and built a house on that, and we lived there.

Q. Did you build any other building than a house? A. Oh, I built outbuildings.

204 Q. How was that property used? A. At that time, while I was having the house built and preparing it, I had closed out my mercantile business. I did not have capital sufficient to compete with larger merchants who commenced business there; and I closed out my mercantile business, and was keeping books for a large firm there.

Q. I am speaking first about the condition of the place, the farm. A. I placed a colored man on the place with his family, and furnished him a team; and he made a business of cutting and hauling firewood, and of course cultivating some little crops. There was very little land open at first. In order to open the land I employed him to cut the timber off and haul it to town and sell it for firewood. I gave him half. When they were doing regular work, the proceeds were about $10 a day. We would haul eight loads, and get a dollar and a quarter, and I would get half of that. With the sale of that wood I made money to build the house and the improvements on the place. My salary as book-keeper of course gave us a living.

Q. Did you get the place under cultivation? A. Yes, sir.

Q. And what character of products did you have? A. Cotton, principally, sir, and corn and potatoes and sweet potatoes. It was near the town. I used to raise a pretty large crop of potatoes, and a great many melons.

Q. Did you raise any animals? A. Yes, sir; hogs, principally. We had cows for milch purposes, and hogs. I generally raised hogs enough to supply my family, and had some pork to sell nearly
205 every year.

Q. What was the name of this establishment for which you became book-keeper? A. Chaffe, Shea & Loye.

Q. What was their business? A. General merchants and cotton dealers. They dealt largely in cotton.

Q. Was that a big establishment? A. Yes, sir; a big establishment. They bought a great deal of cotton.

Q. Can you give some idea of the magnitude of the business? A. Why, sir, of course I do not remember the amount of the sales. I think sometimes the sales would amount to thirty or forty thousand dollars a month, in the busy times. I only speak from memory. I have no memorandum by which I can tell you those things so long ago.

Q. What salary did you get in that business? A. I declare I cannot remember whether it was one hundred or one hundred and twenty-five dollars a month, sir; not less than one hundred.

Q. Now, I want you to state whether or not this farm yielded vegetable products, garden products? A. Yes, sir; I would sell some vegetables—it was close to the town,—and a good many melons and a good many sweet potatoes. It paid very well.

206 Q. State whether or not the farm, as such, independent of your salary, yielded a support for your family? A. Well, yes, sir. It would have kept the family from want; but I did not depend entirely upon that in supporting them.

Q. How long did you hold this place with Chaffe, Shea & Loye? A. I could not say positively.

Q. As near as you can get at it? A. I should say it was a year at any rate; possibly longer.

Q. Let me ask you now if you continued to run this farm as long as you remained in Louisiana? A. I did.

Q. So that all the time, whatever business you were in, the farm was being run continuously? A. All the time.

Q. Now, what was the next business that you were engaged in after you left Chaffe, Shea & Loye? A. I was appointed superintendent of education for the fifth general division of Louisiana, as the law then read.

Q. Did that include Webster parish? A. That included Webster parish and a number of other parishes; but I cannot remember the names of them now, of course.

Q. Do you remember how many divisions there were in the State? A. Five.

Q. And yours was the fifth? A. Mine was the fifth.

Q. What compensation did that yield you? A. I am unable to tell you positively. It was either $2,000 or $2500 or $3,000 a year. I really could not say which it was. It has been a long time
207 ago; it was not less than $2,000, though.

Q. How long did you hold that? A. About a year. I don't think I held it an entire year.

Q. Then did you give that up voluntarily? A. Well, no sir; not exactly. The five superintendents constituted, with the State superintendent as president, the State board of education; and I was notified to meet the board. The first notification I got was nearly a year after I was appointed. I had been doing the work that they assigned me. I went to New Orleans and met the board, and was called upon there for my notions as to the conduct of the business of the State board, about which I differed radically with the others.

Q. Well, I do not care to go into those details. What happened as a result? A. Shortly after that I was superseded by the appointment of another man—a party man.

(At this point a recess was taken until 1 o'clock p. m.)

After recess.

Direct examination of T. M. TURNER resumed.

By Mr. JOHNSON:

Q. Mr. Turner, after you ceased to be the superintendent of the 5th division of State schools, what business did you next engage in, besides conducting the farm? A. For some months 208 I was not in any regular employment, but I did work for the officers of the parish there at different times, and some work for the lawyers, in making up accounts in succession matters and such as that—piece-writing for the different officers there, and so on.

Q. What did that yield you during those months? A. I should say about $50 a month.

Q. How long were you occupied that way before you became engaged in a regular employment; how many months? A. It seems to me it may have been six months, possibly, or more. I could not say positively—not a great while.

Q. Then what did you engage in? A. I was then appointed clerk of the district court.

Q. Is that the State court or the Federal court? A. The State court.

Q. Was that a fee office or a salary office? A. Fees.

Q. What did that yield? A. From two to three thousand dollars a year.

Q. How long did you hold that office? A. Over three years, sir. I couldn't tell you, exactly—nearly the whole term—I should say fully three years and a half.

Q. You succeeded another man who had been elected for the term? A. Yes, sir.

Q. Do you remember who that was? A. I do not, now. I don't remember the name now.

Q. Then, after you ceased to be clerk of the court, what 209 if any office did you hold? A. I was treasurer there, sir—parish treasurer, it was called; treasurer of the parish money, for public purposes and also of public-school money.

Q. That was for Webster parish? A. Yes, sir.

Q. Did you do any other work during that time? A. Yes, sir; I did the same nature of work that I form*al*ly expressed; piece-work. I would usually make for the assessor his—we called it tableau there. Every year I made that for him. I would charge him $100 for making that. It would take me about two or three weeks to make it; and I did other work around the court-house.

Q. About how much per annum did that yield while you were parish treasurer, and doing these other jobs? A. About a thousand dollars a year, sir.

Q. Do you remember how long that continued? A. Several years. I couldn't tell you exactly.

Q. Then what was the next occupation? A. The next thing I was deputy clerk.

Q. Who was the clerk then; do you remember? A. A man by the name of Warren.

Q. Did you hold any other office in the parish besides deputy clerk? A. It seems to me, sir, I was a justice of the peace at the same time. I know I did act as justice of the peace at one time.

Q. Did it yield any revenue? A. The office of the justice of the peace?

Q. Yes. A. Oh, yes; two or three hundred dollars.

210 Q. What income did you derive from the position of deputy clerk? A. About a thousand dollars a year from that sir. The fees of the office ran something, I think, a little over $3,000 and I got a third of it, about $1,000.

Q. Was that by the law, or by arrangement with Mr. Warren? A. By arrangement with him, private arrangement.

Q. The deputy then was the employé of the clerk? A. Yes, sir.

Q. On his own terms? A. Yes, sir.

Q. While you were clerk, did you employ a deputy? A. I did not regularly sir. I had help at times.

Q. Do you recall the circumstance of your brother's last illness? A. Yes, sir.

Q. At that time, how were you engaged? A. I was engaged then as deputy clerk.

Q. You were deputy clerk at the time he was taken ill? A. Yes, sir.

Q. Do you remember when it was you learned of his illness? A. It was a very short time before I came to Virginia.

Q. When was it you came to Virginia? A. It was in August. If I can look at a memorandum, I can give you the date.

Q. I do not want the exact day. A. It was in August.

211 Q. August of what year? A. 1888.

Q. I wish you would state how, during all these years, you utilized that farm. A. Well, sir, I had it cultivated. The principal crop that I raised for money was cotton, sweet potatoes and melons. They were the principal moneyed crops. I raised grain crops and such as that for feed purposes, to feed my stock. In the winter time I received a very good revenue from the sale of firewood from the place.

Q. Did you raise vegetables for family use? A. Yes, sir; I raised hogs for family use and also, each year, had some pork or bacon to sell.

Q. Can you give us, please, the dates of the births of your children?

A. I will have to refer to a memorandum to do that, sir. I cannot keep it in my mind.

Q. You can refer to a memorandum. Can you give the months and years, without referring to your memorandum? A. Not easily sir. It would be rather difficult to do. I was married in 1867, in November, and the oldest child, Erle, was born in 1868, I think in October.

Q. Who was the next child? A. Wilmer.

Q. Can you state the year when she was born? A. I think sir, she was born in 1875.

Q. What month? A. I don't remember.

Q. Do you remember the season of the year? A. Yes, sir; that was in the fall of the year, too.

212 Q. Then when was Ashby born? Do you remember when Ashby came of age? A. Yes, sir; he became of age in February last.

Q. February of the present year? A. Yes, sir.

Q. Do you remember the day of the month? A. No, sir; I can't remember the day of the month.

Q. Then the next child is Lunette? A. Yes, sir.

Q. When was she born? A. I couldn't give you the year, sir.

Q. Well, you can refer to your memorandum now. A. I couldn't give you the year she was born in, sir. I never memorized those things.

(After examining memorandum:) Ashby Turner was born February 3, 1880. Lunette Turner was born December 19, 1882.

Q. Who supported your wife and family during the time of your marriage, until August 1888, when you came to Virginia? A. I did.

Q. I wish you to state how they were supported? A. Well, sir, they lived about as comfortably as people there generally. They didn't live in any grand style or anything of the kind, but very comfortably.

Q. Did your wife have any domestic servants? A. Yes, sir; I always kept a servant for her. Sometimes two; generally one.

Q. Were your children educated according to their age while there? A. Yes, sir; we sent them to school.

213 Q. Were they educated in the public schools or at private schools? A. Private schools. I never sent them to a public school.

Q. Who paid their tuition? A. I did, sir.

Q. Did you employ any manual labor on the farm? A. Yes, sir.

Q. State whether or not you provided your family, your wife and your children, with any comforts of life outside of mere necessities? A. Oh, yes sir. I suppose they lived about as well as most any one there.

Q. Was your wife in strong health during all the time you lived there? A. No, sir; that was a sickly country, and at times her health was rather feeble.

Q. State whether or not you made provision for that condition. A. Oh, yes sir; I remember on one occasion there I had to send her for several months to some springs that were near there. Her health was quite feeble at the time, and I bought her a buggy and harness and had my son, the oldest, to drive her out to those springs every morning and back again before the great heat of the day. That lasted for several months, and improved her health very much; and of course I had medical treatment there always. We had to have a good deal of it there as it is a sickly country. I paid a good many bills for medical treatment. I always had the best physicians I could get.

214 Q. In August 1888 you came out to Virginia where your brother was. Tell us where that was. A. That was a farm called Moorland, in Fauquier county, Virginia.

Q. Was that near to any town, or to what town was it nearest? A. Their post-office was Marshall, on the railroad.

Q. Had you been in Virginia then since you went out to Missouri before the war? A. No, sir.

Q. Did you find your brother ill when you got here to Virginia? A. Yes, sir; his health was very bad.

Q. Were you with him at the time of his death? A. Yes, sir; I was with him from the time I arrived in Virginia, the 11th of August, I think it was, until his death, the 21st of September.

Q. What year? A. The following month.

Q. 1888? A. 1888.

Q. Did you learn while you were with him and before his death that he had made a will? A. Yes, sir.

Q. Did you see the will? A. I did.

Q. Where was it? A. Where was the will?

Q. Yes, sir. A. It was in his possession. He had it in his trunk. That was shortly before he died.

Q. Did he show it to you? A. Yes, sir, he showed it to me. He had me to unlock his trunk and get the papers, and he showed it to me.

215 Q. I show you a paper which has been offered in evidence, marked "Exhibit Erle H. Turner No. 22," and ask you to state if you ever saw that paper before—those two sheets? A. Yes, sir.

Q. Where was it when you first saw it? A. That was in my brother's possession when I first saw it. He showed it to me.

Q. You stated you knew Philip A. Tracy before you left Virginia to go to Missouri? A. Yes, sir.

Q. Did you ever know him again after that? A. Yes, sir; I met him.

Q. Where did you meet him? A. I met him in this city, in the General Post-Office Department.

Q. In what year? A. 1888.

Q. Do you remember in what month? A. My memory is the 28th of September.

Q. After your brother's death? A. After my brother's death, about a week, I think.

Q. Did you ever see Mr. Tracy write? A. Yes, sir.

Q. Did you ever receive letters from him? A. Yes, sir.

Q. I will ask you to look at this paper, "Exhibit Erle H. Turner No. 22." At the top is the name of S. H. Turner. In whose handwriting is that? A. That is in Mr. Philip Tracy's handwriting.

216 Q. In whose handwriting are the dates and names and figures on that sheet which are written in ink? A. That is in Mr. Tracy's handwriting.

Q. All of the ink writing? A. Yes, sir; all of the ink writing.

Q. In whose handwriting, if you know, are the lead-pencil footings? A. The lead-pencil footings are in my handwriting.

Q. In whose handwriting are the lead-pencil words "Am't for'd," at the top of the second sheet? A. That is in mine, sir.

Q. Do you know in whose handwriting the memorandum in pencil at the bottom of the second sheet is, the words "This list was given by Mr. Tracy as a list of the property of S. H. Turner in his hands." Do you know in whose handwriting that is? A. I think that is in my son's handwriting.

Q. Which son? A. Erle. I think so.

Q. Do you know who pasted this paper together where these breaks are? A. I pasted it together, sir.

Q. I will ask you to state whether or not that paper came into your possession on your brother's death? A. It did.

Q. You have stated that you saw the will of your brother. In whose handwriting was that, if you know? A. It was in Tracy's handwriting.

Q. Philip A. Tracy? A. Yes, sir.

Mr. WILSON: I object to his testifying as to the handwriting in which the paper was, the paper not being produced.

By Mr. JOHNSON:

217 Q. Now, do you know what was done with that will? A. I carried the will to Warrenton, the county-seat of Fauquier county and employed Eppa Hunton, Jr., to have it probated.

Q. In the court, do you mean? A. In the court, yes, sir.

Q. Was that done? Was the will probated?

Mr. WILSON: I object to that question as incompetent.

A. It was.

Mr. WILSON: I object to the question and the answer as incompetent to prove the probating of the will.

By Mr. JOHNSON:

Q. Look at this paper marked "Exhibit Erle H. Turner No. 20" and state if you know in whose handwriting that is. A. That is in the handwriting of Eppa Hunton, Jr.

Q. Mr. Turner, you say you saw Mr. Tracy in this city on the 28th of September, 1888, at the Post-office Department? A. Yes, sir.

Q. Was any one with you at the time? A. Yes, sir; Mr. Eppa Hunton, Jr. was with me.

Q. How did he come to be there? A. By appointment. We had the agreement, when I went to him to probate the will, and we agreed to meet here on a certain day.

Q. Whom do you mean by "we"? A. Mr. Hunton and myself, and he met me at the National hotel. I got to Washington first, and was waiting for him, and as soon as he came we went on up to the
General Post-Office Department, and there met Mr. Tracy.

218 Q. Now I will ask you to state what you said to Mr. Tracy
and what he said to you, and what, if anything, you exhibited to him? A. Well, I will have to give you the substance, of course. I can't remember the exact language. I will give the substance of it. I told him of my brother's death first. I then exhibited this list of notes——

Q. Do you mean this Exhibit, Erle H. Turner No. 22? A. Yes, sir. I showed him this paper and told him my brother had told me he had these notes described in his list in his possession for my brother, and I wanted to know about it. He said it was all correct, that he had the notes, all of them, in his possession, and that the notes were as good as gold, I believe was his expression.

Q. Was Mr. Hunton present? A. Mr. Hunton, was present.

Q. Tell us what else, if anything, was said. A. He then told me he had just gotten leave of absence and was on the eve of going for a few weeks into the country for the benefit of his health, and that I could return to Virginia, and when he returned from the trip, he would notify me and I could come to Washington and we would have a settlement of the matter. He then turned to me and remarked that possibly I would need some money to discharge the funeral expenses, etc., and handed me some money. It is hard to remember the exact amount, without referring to a memorandum,

Mr. WILSON: Give us the approximate amount.

By Mr. JOHNSON:

Q. Before you refer to your memorandum, state how near
219 you can come to the amount? A. It was something in the
neighborhood of $400. It seems to me it was $430 odd dollars, or something of that kind. It was several hundred dollars, I know. (After examining memorandum:) $439.25 was the amount in exact figures; and he told me that that was money that he had collected as interest on the notes. He handed me that money and I asked him if he did not want a receipt for it. He said no, he would just make a memorandum of it, and would include it in the final settlement.

Q. Was Mr. Hunton present when he did that? A. Yes, sir; Mr. Hunton was there.

Q. Did anything further take place? A. No, sir; I think nothing further, there.

Q. Did he give you that money in cash or check? A. In cash. He remarked he had just collected some interest money, and would turn it over to me.

Q. Did anything else occur that you can recall, at that interview? A. No, sir; I don't remember anything else.

Q. Did Mr. Tracy state whether or not he knew, before you told him, of your brother's death? A. He was not aware of the death when I came.

Q. I mean did he say anything? A. Yes, sir; he seemed to be surprised when I told him—shocked, at least. I don't know that he was greatly surprised, because he knew his health was very bad, but he seemed to be shocked. He said it was the first he had heard of it.

Q. Well, did you leave after that? A. Yes, sir.

220 Q. Did Mr. Hunton stay throughout the interview? A. Yes, sir; we left the building together. We came downtown and separated then. I think Mr. Hunton went on back. I don't remember about that, but it seems to me he went back to Warrenton the same day.

Q. Did you leave this list "Exhibit Erle H. Turner No. 22," with Mr. Tracy? A. No, sir.

Q. You took it away with you? A. I took it away with me.

Q. Did you keep it in your possession? A. Yes, sir; I had it in my possession until I finally disposed of it.

Q. When did you first let it go out of your possession after that? A. It is hard to fix the date, sir.

Q. Can you fix the year? A. 1898, I think.

Q. Did you hear of Mr. Tracy's death? A. Yes, sir.

Q. State whether it was before or after his death that your parted with that paper? A. I received a letter from my son, Erle H. Turner, informing me that Mr. Tracy was dead, and in the letter he requested me to send him a copy of my brother's will if I could do so, and any other papers that I had in my possession that would bear on the estate left by my brother. In response to that letter——

Mr. WILSON: I object to his stating the contents of the letter unless he properly accounts for its absence.

Mr. JOHNSON: I will do that, of course.

221 The WITNESS: In response to his letter I sent these papers and copy of the will and this list, and perhaps some others. I don't know now.

Q. You mean this copy that you say is in Mr. Hunton's handwriting? A. Yes, sir.

Q. And this list? A. Yes, sir.

Q. Have you got that letter of your son's? A. No, sir; I have not. I looked for it, but I could not find it.

Q. When? A. Before I left home, to come here.

Q. Now, during all the time preceding the sending of this list and that copy of the will to your son, where was it kept? A. Where was the paper kept?

Q. Where were those papers kept? A. They were kept in my private possession, sir. I kept the keys.

Q. Did Mr. Tracy afterwards advise you of his return to Washington? A. Yes, sir.

Q. Where were you at the time you received notification of that? A. I was either in Fauquier county or over in Clark, near Berryville; one or the other. I am not positive.

Q. Did you receive the notification by mail? A. Yes, sir.

Q. Have you got that letter? A. No, sir; I have not.

Q. Have you looked for it? A. Yes, sir. I don't know what became of it. It was just simply a notice that he had returned,
222 and request- me to come down.

Q. Well, did you come? A. I did, sir, on that.

Q. Can you state when you got here? A. No, sir; I don't remember the date.

Q. Can you tell the month? A. I think it must have been about a month after my first interview with Mr. Tracy or maybe longer. I can't say. I have got no way to tell.

Q. How soon after you got to Washington did you see Mr. Tracy? A. I saw him the same day that I got here.

Q. Do you remember where you saw him? A. I first saw him up at the General Post-Office Department.

Q. Tell us as near as you can what took place there. A. There I only exchanged greetings with him. There was nothing in regard to business. He remarked that he would be at the National hotel at a certain hour—I don't remember what hour, but after he got off his duties there—and that evening and night we had an interview at the National hotel.

Q. Do you know where he was stopping at that time? A. He was boarding at the National hotel at that time.

Q. Did you know his sister? A. Yes, sir; he introduced me to her. That was the only way I knew her.

Q. Was she an elderly lady? A. Yes, sir.

Q. I will ask you to look at this paper and state in whose
223 handwriting it is, if you know, and from whom you got it. (Handing witness a paper.) A. That is in Phillip A. Tracy's handwriting, and he gave me that paper.

Q. When did he give it to you? A. It was the time I came down on the second trip, for the settlement.

Q. Was it before or after you saw him at the Post-Office that second time? A. It was after that.

Q. Where was it? A. At the National hotel.

Q. There are a number of check-marks on this paper. Were they on it at the time Mr. Tracy gave it to you? A. No, sir.

Q. Do you know anything about who put those on? A. I made those checks, in comparing it with the original list. It did not compare with that in every way.

"Exhibit T. M. T. No. 1," see page 468.

(The paper last identified by the witness was thereupon offered in evidence by counsel for the complainants, and the same is filed herewith, marked "Exhibit T. M. T. No. 1.")

By Mr. JOHNSON:

Q. Mr. Turner, when he gave you this paper, I would like you to

state what, if anything he said to you. A. Well, he gave me this and told me to examine it and see if that statement would be a satisfactory settlement between us. That was the substance of what he said. I examined the paper then at my leisure that night, and was dissatisfied about it, and the next day we had a talk
224 about it.

Q. That night when he handed it to you, did you examine it in his presence? A. I glanced over it, but made no remark.

Q. Then when you refer to examining it at your leisure, you mean out of his presence? A. Yes, sir.

Q. You say the next day you saw him? A. Yes, sir; the next day.

Q. Where did you see him the next day? A. At the same hotel.

Q. Where did that interview take place; at his room or yours? A. It was in my room.

Q. Where did you see him the next day? A. In the same place.

Q. I mean in what room? A. My room.

Q. What took place then? I want you to state now the conversation between you as nearly as you can. I do not expect the words, but the substance. A. I first objected to this because there had been some notes substituted here that were not on the original list, and I did not know whether the notes were good. Then I objected to the amount. It was then that Mr. Tracy told me——

Q. One minute, before you go ahead. What do you mean
225 by the amount; the amount of the notes? A. Yes, sir; the amount of the notes.

Q. Was there any difference in the amount of those notes and in this paper? A. Yes, sir; considerable difference.

Q. Do you remember what it was?

Mr. WILSON: I object to that. The notes will speak for themselves.

Mr. JOHNSON: I have a right to know whether he remembers what it was.

A. There was a difference in the amount of the notes specified on that list and this of over $6,000.

Q. You stated to him that you objected to it? A. Yes.

Q. Now tell us what followed? A. Then he told me that he would not qualify as executor of the will, and he said that if I attempted to qualify as guardian or administrator, he was satisfied the heirs of my brother here in Virginia would contest the will. He furthermore told me that there would be a good deal of cost attached to it, that I would have to give a bond, it seems to me, of double the amount of the whole estate, and that would be difficult for me to do, he said, and he also said there would be a tax on it, a legacy or inheritance tax. I understood it—I did not know the law here—which would amount to several thousand dollars; and he wound up by stating that, all that taken into consideration, this amount would be more, perhaps, than I would get clear if I were to administer on it. He then remarked that if I would settle by this

list, he would turn the property over to me without having
226 anybody appointed as executor or administrator or guardian,
and that we could put the notes in bank here and have them collected, and I could get the means away from here as quick as possible, and perhaps that would prevent the other heirs of my brother in Virginia from attempting to break the will.

Q. Now I want you to tell me, if you can recall, what time in the day that conversation occurred. You say it occurred the next day after his exhibiting this paper, T. M. T. No. 1. A. Why, it was in the afternoon that all of our conversations, pretty much, took place.

Q. Did you settle the matter then and there or what? A. Yes, sir; I finally agreed to settle it in that way. I was uneasy. I did not know——

Q. One minute. You accepted that settlement. Did the settlement, the delivery of the notes, actually take place then? A. I am not positive about that. Yes, sir; I think right at that time. No, he delivered me the notes up at the General Post-Office Department.

Q. That same day? A. I think it was the same day; yes, sir.

Q. Did you sign any acknowledgment or receipt? A. Yes, sir; I signed a receipt for, I think, what is expressed on this paper.

Q. To whom did you deliver that? A. I delivered that to Philip A. Tracy.

Mr. Johnson: Now, Mr. Wilson, will you please produce that receipt given by the witness to Philip A. Tracy?

Mr. Wilson: Yes, with great pleasure.

(The paper referred to was produced by counsel for the defendants.)

227 By Mr. Johnson:

Q. Mr. Turner, will you look at that paper and look at the signature T. M. Turner, and state whether that is your signature? A. Yes, sir; that is my signature.

Q. I observe on this paper, "T. M. Turner, natural tutor and agent for my minor children." In whose handwriting is that? A. That is in my handwriting.

Q. The name and those words following? A. Yes, sir.

Q. There is also, "Received the above-described notes and cash, in full." In whose handwriting are those words? A. They are in Mr. Philip A. Tracy's handwriting.

Q. In whose handwriting are the words following, "Under the will of S. H. Turner, deceased." A. That is in my handwriting.

Q. Is that the paper you signed? A. Yes, sir.

Q. Is it now in the condition in which it was when you signed it, as to being pasted? A. Yes, sir.

Q. It was in that condition, was it? A. I think that is the same condition; yes, sir.

Q. On this list I observe are the words "Lots on Md. Ave. N. E.," and the figures $1800. Did Mr. Tracy give you any conveyance of lots in this city? A. No, sir.

Q. Did he put you in possession of any ground? A. No, sir.

228 Q. On this list, in lead pencil are written the words "Notes all placed in Second national bank by T. M. Turner." State in whose handwriting that is. A. I take that to be Mr. Tracy's handwriting.

Q. There are also in lead pencil the words, in parentheses, "Int. now due" and the figures, in lead pencil, "600." State in whose handwriting that is? A. That is in Mr. Tracy's handwriting.

Q. On this receipt is "September 28, cash T. M. T. $439.25." Did you receive that money from Mr. Tracy? A. Yes, sir.

Q. Then there follows, "Nov. 30, ditto, ditto, in full 337.64." Did you receive that money from Mr. Tracey? A. I did.

Q. Did you receive any other cash money from him? A. That was all, sir.

Q. Was your wife living on the 30th day of November, 1888? A. Yes, sir; she was living.

Q. Is she still living? A. She is still living.

Q. Have you ever been divorced? A. Never.

Q. In whose handwriting is the lead-pencil writing on the back, of this receipt? A. That is in Mr. Tracey's.

Q. Did Mr. Tracy deliver to you the notes specified in this receipt? A. He did.

Q. I observe by looking at the paper that where the two pieces are pasted together, there are other words and figures written 229 which are in part obscured by the pasting. Do you know anything about that? A. I do not sir. No, sir; I know nothing of that.

"Exhibit T. M. T. No. 2," see page 469.

(The paper last identified by the witness was thereupon offered in evidence by counsel for the complainants, and the same is filed herewith, marked "Exhibit T. M. T. No. 2.")

By Mr. JOHNSON:

Q. Did Mr. Tracy at any time give you any writing referring to the lots on Maryland avenue? A. Yes, sir; at the time of this settlement he gave me a statement that he had——

Q. One minute—I do not want the contents of it. In whose handwriting was it? A. It was in Mr. Tracy's handwriting.

Q. What became of that? What did you do with it? A. I gave that to my son.

Q. Which son? A. Erle H. Turner.

Q. Have you ever seen it since? A. No, sir.

Q. Do you know where it is? A. I do not.

Q. Did you keep any copy of it? A. Yes; I kept a copy of it.

Q. Look at this paper (handing witness a paper) and state whether it is a copy of it? A. Yes; that is a copy of it.

Q. In whose handwriting is that? A. In my handwriting.

"Exhibit T. M. T. No. 3," see page 471.

230 (The paper last identified by the witness was thereupon offered in evidence by counsel for the complainants, and the same is filed herewith, marked "Exhibit T. M. T. No. 3.")

By Mr. JOHNSON:

Q. Did Mr. Tracy at any time after the signing of that receipt give you any sum of money? A. No, sir; not after signing the receipt.

Q. Did he at any time after the signing of that receipt give you any conveyance of any real estate? A. He did not.

Q. Did you ever see him after that settlement in November, 1888? A. Yes, sir; I saw him.

Q. Did you ever speak to him with reference to the Maryland Avenue lots? A. Yes, sir; we had several conversations about that.

Q. Did he ever show you the property? A. He showed me what he said was the property, sir. I don't know what it was. We walked on what it seems to me he told me was Maryland avenue, and finally he showed me a vacant square there that he said was the property.

Q. Did any one accompany you besides Mr. Tracy? A. No, sir; just he and I were walking out.

Q. Were you familiar with the city? A. No, sir.

Q. Are you now? A. No, sir.

231 Q. As you walked out on this street that he told you was Maryland avenue, on which side, the right or left hand side as you went east, was the square that he pointed out to you? A. The square was on our right-hand side of the street we went.

Q. Would you be able to identify the locality now? A. Oh no, sir.

Q. Can you tell us when it was that you and Mr. Tracy went out and he showed you this square of ground? A. No, sir; I could not locate that.

Q. Can you state whether it was before or after the settlement in November, 1888? A. Oh, it was after the settlement—afterwards.

Q. When were you last in Washington before this present visit? A. In 1891.

Q. Was it before that? A. That I saw the lots?

Q. Yes. A. Yes, sir; he showed me the lots shortly after our settlement.

Q. Before you returned to Louisiana? A. Yes, sir.

Q. Did you ever go out there a second time? A. Oh, no.

Q. Did he mention to you the name of any other person that was interested in the ground besides himself and your brother? A. No, sir; he said there was a company.

Q. He mentioned no names? A. No names.

232 Q. Can you recall when was the time you spoke to him about it, if you did speak to him about it? A. Well, I could not say positively about that. We spoke about it several times, because we agreed at the time that we could not sell the land. I insisted on holding it, if it was possible for him and myself to hold as much land as the invested money would take, and we agreed to

that; and afterwards—I could not say exactly at what time—when he told me that it had been sold, I was rather surprised.

Q. Can you state when it was that he told you it had been sold? A. No, sir; I could not give you the exact date of that.

Q. Can you come anywhere near it? A. It was between the time of our settlement and the spring of 1891. During that time I was here two or three times.

Q. It was prior to the spring of 1891? A. Yes, sir.

Q. When he told you it had been sold, did he tell you how much it brought? A. No, sir; he would not tell me how much it brought. He said my brother's interest in it amounted to $2750, after paying all expenses. I asked him how much the lot brought, but he evaded it. He never told me. He said that that was — it amounted to, and he thought that was doing very well. $2750 is what he told me it netted my brother, or the estate.

Q. State whether he ever gave you any part of that $2750? A. He has not.

Q. Did you ask for it? A. I did.

233 Q. What reply did he make? A. He said he believed he would not turn it over.

Q. Did he give any reason? A. He said that if I would qualify then as administrator and make bond that he would turn it over. He said he had consulted a lawyer, and he did not propose to turn it over.

Q. How soon after this settlement with Mr. Tracy in November, 1888, did you return to Louisiana? A. I got to Louisiana, it seems to me, during the Christmas holidays.

Q. Of the same year? A. Yes, sir.

Q. Had you written there in the meantime? A. Yes, sir; I had written some letters to my family.

Q. Do you know what became of any letters that you wrote during your stay here? A. No, sir; I could not tell you now.

Q. I say letters that you wrote. Do you know what became of them? A. No, sir; I do not.

Q. Have you ever seen them since? A. No, sir. I never saw them afterwards.

Q. Did you meet any of your brother's relatives during your stay here, before returning to Louisiana? A. Yes, sir.

Q. Did you give any of them any information about the will of your brother's estate? A. I did not.

Mr. Wilson: Objected to as immaterial and incompetent.

234 By Mr. Johnson:

Q. Were you present at court at the time of the proceedings for its probate? A. I was not.

Q. Did you ever meet Mr. George G. Fenton, one of the witnesses to your brother's will? A. I think I was introduced to him, I am not positive about that.

Q. Did you know him? A. No, sir. I am not positive even about that, but it seems to me I was introduced to him.

Q. Was Mr. Eppa Hunton, Jr. here in the city at the time you made your settlement with Mr. Tracy? A. He was not.

Q. Did you ever see him again? A. I never saw him any more.

Q. Did you have any correspondence with Mr. Tracy? Did you write to him or receive any letters from him? A. Yes, sir; we had some correspondence. I received some letters from him.

Q. What did you do with the letters you received from him? A. I think I sent them to my daughter here, at her request.

Q. Did you send all? A. All that I could find, sir. I think that was about all I ever received from him.

Q. Will you tell us please, when it was that you sent them
235 to her? A. I think it was in 1899.

Q. State whether it was before or after Mr. Tracy's death? A. It was after Mr. Tracy's death.

Q. Was it before or after you sent the list of notes and the copy of the will to your son. A. It was afterwards. It seems to me that it was in January or February of the next year.

Q. I show you a letter dated October 10, 1888, and and envelope enclosing the same, postmarked some point in Virginia, October 11, 1888. Also a letter dated December 22, 1888, and the envelope enclosing the same, postmarked Washington, December 22, 1888. Also a letter dated January 17th, 1889, and the envelope enclosing the same, postmarked Washington, January 17, 1899. Also a letter dated January 25, 1889, and the envelope enclosing the same, postmarked Washington, January 25, 1889. Also a letter dated June 17th, 1899, and the envelope enclosing the same, postmarked Washington, June 18, 1899. Also a letter dated June 26th, 1889, without envelope. Also a letter dated July 13, 1889, and the envelope enclosing the same, postmarked Washington, July 13, 1889. Also a letter dated August 22, 1889, the envelope enclosing the same, postmarked Washington, August 22, 1889. Also a letter dated September
236 27, 1889, and the envelope enclosing the same, postmarked
Washington, September 27th, 1889, and the envelope enclosing the same, postmarked Washington, September 26th, 1889. Also a letter dated April 19, 1890, and the envelope enclosing the same, postmarked April 23, and another postmark showing the year 1890, and also bearing the postmark, Vernon, Texas, April 25, 1890. Also a letter, without envelope, dated May 7, 1892. I will ask you to state in whose handwriting, if you know, each of those letters is. A. In the handwriting of Philip A. Tracy.

Q. Now as to the superscription, the address on the envelopes. A. The address is in his handwriting.

"Exhibit T. M. T. Nos. 4 to 14 incl.," see pages 472–485. "Exhibits T. M. T. No. 4–A, T. M. T. No. 5–A, T. M. T. No. 6–A, T. M. T. No. 7–A, T. M. T. No. 8–A, T. M. T. No. 10–A, T. M. T. No. 11–A, T. M. T. No. 12–A, T. M. T. No. 13–A, see pages 473–484."

(Eleven letters last identified by the witness were thereupon offered in evidence by counsel for the complainant- together with the envelopes identified by him; and the same are filed herewith, the said letters being marked "Exhibits T. M. T. Nos. 4 to 14," inclusive, and

the envelopes being marked "Exhibits T. M. T. No. 4–A, T. M. T. No. 5–A, T. M. T. No. 6–A, T. M. T. No. 7–A, T. M. T. No. 8–A, T. M. T. No. 10–A, T. M. T. No. 11–A, T. M. T. No. 12–A, T. M. T. No. 13–A.")

By Mr. JOHNSON:

Q. I observe the envelope bearing the Vernon postmark was originally addressed "Thomas M. Turner, Esq., Minden, La." and that the "Minden, La." is erased and it is marked "Vernon, Texas." Do you know in whose handwriting that change in the address is? A. No, sir; I couldn't tell you that. 237

"Exhibit T. M. T. No. 2–A," see page 471.

(An envelope marked in the handwriting of Philip A. Tracy with the words, "Estate of S. H. Turner" is produced by counsel for the defendants, containing the receipt marked "T. M. T. No. 2," and is offered in evidence.

The said paper is filed herewith, marked "T. M. T. No. 2–A."

The further taking of these depositions was thereupon adjourned until Tuesday morning, May 21st, 1901, at 11 o'clock.

238 *Testimony for Complainants.*

Filed March 28, 1902.

WASHINGTON, D. C., *May 22nd*, 1901—11 o'clock a. m.

Met pursuant to adjournment.

Adjourned until 1 o'clock, p. m. of the same day.

WASHINGTON, D. C.,
WEDNESDAY, *May 22nd*, 1901—1 o'clock p. m.

Met pursuant to adjournment.

Present on behalf of the complainants, Mr. Johnson.

Present on behalf of the defendants, Mr. Wilson.

Present, also, George W. Gray, Esq., one of the executors, in person.

THOMAS M. TURNER, the witness under examination, when the adjournment was taken, was recalled, and his direct examination continued, as follows:

By Mr. JOHNSON:

Q. Mr. Turner, I show you a letter dated "2 / 12 / 91," and ask you to state if you know in whose handwriting it is. A. I recognize it as the handwriting of Philip A. Tracy.

Q. When did you first see that letter? A. Since I have been here.

239 Q. Can you state who showed it to you? A. I think you showed it to me first, sir. You first showed me that letter.

"Exhibit T. M. T. No. 15," see page 486.

(The above-mentioned letter was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit T. M. T. No. 15.")

By Mr. Johnson:

Q. Mr. Turner, in Mr. Tracy's letter to you of May 7th 1892 (Exhibit T. M. T. No. 14) Mr. Tracy speaks "of the commission I charged on your brother's estate (5%)." I will ask you to state when, if at any time, he mentioned such a charge to you before that letter? A. That was the first intimation I had of it. He never had mentioned, before that, anything of the kind.

Q. In another part of the same letter he says: "This amount of my charge for attending to the business for sixteen years ($120 a year) will stand." When, if at all, prior to this letter had he ever mentioned that to you? A. That was the first time he ever mentioned that.

Q. Did he ever mention it at any subsequent time? A. No, sir.

Q. You stated the other day that in your first interview with Mr. Tracy at the Post-Office Department Mr. Eppa Hunton, Junior, was with you? A. I did.

Q. I want you to state whether Mr. Hunton was near enough to see what took place between you and to hear the conversation? A. Yes, sir; he was immediately present, and unquestionably saw and heard all that was said and done.

240 Q. I want you to state now, Mr. Turner, if you ever caused to be recorded in any public office in the District of Columbia, State of Virginia, State of Louisiana, or State of Texas any inventory or appraisement of the property left to your children by the will of your brother? A. I never did.

Q. I will ask you to state whether you ever caused an inventory and appraisement of that property to be made in the District of Columbia, the State of Virginia, the State of Louisiana, or the State of Texas? A. I did not there, or anywhere else.

Q. Did you ever file in the supreme court of the District of Columbia any certificate of a judge of any court of your appointment or authority as guardian of your children, or that you had given bond as such? A. I did not, sir.

Q. Did you ever file in the supreme court of this District any evidence of your appointment or authority as guardian of your children? A. I did not, sir.

Q. State when and where, if ever, you were appointed guardian of your children by any public authority? A. I never was so appointed anywhere.

Q. Do you remember of whom you purchased the farm in Louisiana? A. It was from a lady named Tarkington.

Q. Do you remember her first name? A. Harriet—Harriet Tarkington.

Q. Was she a married woman or a single woman? A. She was a single woman.

241 Q. When was it that you bought that farm? A. In 1870; in the early part of the year 1870.

Q. Did you ever convey it away? A. Yes sir.

Q. To whom? A. I conveyed it to my wife.

Q. When was that? A. That was not a great while after the purchase. I cannot remember the exact date, sir.

Q. Does she still own it? A. No, sir.

Q. When was it sold? Did you attend to the selling of it? A. I attended to the selling of it, I believe in 1893.

Q. You stated the other day that while you were East in the fall of 1888, at the time of your brother's death, you wrote home to your wife during that absence? A. Yes, sir.

Q. I want to know whether or not you told your wife in any of your letters of the fact that your brother had left an estate?

Mr. Wilson: Objected to as incompetent and not the best evidence.

A. I think I did. I am not positive.

Q. I want you to state whether or not you told her that he had by his will left the property to your children? A. I did not tell her that.

Mr. Wilson: Objected to as incompetent and secondary evidence.

242 By Mr. Johnson:

Q. Was that omission intentional or accidental?

Mr. Wilson: Objected to as immaterial or incompetent and not evidence against the defendants in this case.

A. It was intentional, sir.

By Mr. Johnson:

Q. After your return to Louisiana, after your brother's death, when did you and your family leave there? A. We left there in the summer of 1889.

Q. Where did you go? A. We went to Texas.

Q. Did you all go together? A. Yes, sir. I took the whole family.

Q. Up to that time had you told anybody of the character and contents of your brother's will?

Mr. Wilson: Objected to as incompetent and immaterial.

A. No one, sir, except Mr. Hunton.

Q. What was the first place at which you stopped in Texas? A. I carried my family to a little town called Ennis, I believe. No, sir; I forget the name of the town. It was south of Dallas; it was a little station.

Q. Did you leave them there? A. Yes, sir; I left them there at the house of a nephew of mine. I boarded them there for a while.

Q. Where did you go? A. I went then to look at the different portions of the State, with the idea of selecting a location.

243 Q. Was any one with you? A. Yes, sir; I had a friend who went with me from Louisiana, a Mr. Warren. He was on the same business, looking for a location. He wanted to move his family there.

Q. Did you finally select a place? A. I finally selected a location at Vernon, Texas.

Q. Did you actually purchase any property at that time? A. I decided on a farm there that I wanted; but I had to take a trip from there to Van Alstine to see the owner of the land, and when I found him I made an agreement with him for the purchase of the land.

Q. Did you return to your family then? A. Yes, sir. I returned to where they were, and went back to Vernon, and took my son with me—my oldest son, Erle H. Turner.

Q. What did you do when you got back there with Erle? A. I then bought a lot in the town for a residence lot, and made an agreement with a firm of carpenters there to build a house, and left Erle in charge of my business there to see to the building of the house, and that the contract was carried out, and to attend to the opening up of the farm.

Q. Had you purchased the farm at that time? A. I had purchased the farm then; yes, sir.

Q. Do you remember from whom you purchased the farm? A. Yes, sir; a man named Greer, Dr. Greer.

Q. And do you remember the name of the person from whom you purchased the lot? A. A man named Winans.

Q. Look at this paper and state what it is. A. That is a deed from S. H. Winans and George M. Winans, to me for the lot that I bought in Vernon for a residence.

244 Q. That is the original deed? A. Yes, sir.

"Exhibit T. M. T. No. 16," see page 487.

(The above-mentioned paper was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit T. M. T. No. 16.")

By Mr. Johnson:

Q. Look at this paper and state what that is? A. When I bought the lot I paid part cash and gave a note for a deferred payment; and this is the release on the payment of that note. The note carried a vendor's lien.

"Exhibit T. M. T. No. 16½," see page 490.

(The above-mentioned paper was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit T. M. T. No. 16½.")

By Mr. Johnson:

Q. After you had made this arrangement about building the house and opening up the farm, did you remain there or go away? A. I went back to Louisiana.

Q. You say you left Erle in charge of the business? A. In charge of my business; yes, sir.

Q. Now I wish to ask you what he was to do, and what if any arrangement you made with him for compensation for doing it.

Mr. Wilson: I object to that as *res inter alios acta.*

A. Well, I made this arrangement with him; he was to stay there and attend to my business for me, make the payments as the house was completed under my contracts there, and see to opening up the
farm and manage the whole thing for me; and I promised
245 to give him a half interest in the first two crops of wheat
raised on the place in payment.

Q. Now, I wish you would state as nearly as you can what was required to be done on the farm. A. There was a great deal of work to be done. There had to be a good deal of fencing put on it, and buildings for stock, and things of that kind; and a great deal of sod had to be broken. He had to see to the getting of those teams for me, and procuring hands, and getting feed for the work stock, and so on.

Q. How big was the farm? A. It was 640 acres.

Q. Do you remember how much of it, if any, had been cultivated? A. About thirty acres was what we call broken when I got it. The balance was in native sod.

Q. Now, you say you returned to Louisiana leaving Erle in charge. Where was your family at the time you returned to Louisiana. A. They were still at this little town south of Dallas. It just escapes my memory now what the name of it was. They remained there until they got the house sufficiently completed for them to move in. I directed him, when I left there, as soon as he could get the house in that condition, to go down after them and take them up there, which he did.

Q. When did you return from Louisiana? A. To Texas?
Q. Yes, sir. A. About the first of January.
246 Q. The ensuing January of 1890? A. Yes, sir; about the
1st of January of 1890.

Q. Had your family gotten there at that time? A. They had.

Q. Now, state whether or not the work on the farm had been done? A. Yes, sir; it had been very satisfactorily done.

Q. Had any crops been put in? A. Yes, sir. They had put in a wheat crop in the fall.

Q. How long did you remain there then? A. I remained there then until about June.

Q. Then where did you go? A. I came to Virginia.

Q. Did you take any one with you? A. I did. I brought my whole family and my sister and niece that were out there then.

Q. With whom were they staying? A. They were staying with my family.

Q. Did you bring Erle with you? A. No, sir; I left him there at work on the farm, attending to the farm, managing it.

Q. Then when did you go back to the farm after that, June of 1890? A. I went back in the fall.

Q. The fall of the same year? A. The fall of the same *yes*, yes, sir, and stayed about a month.

Q. Was Erle still there? A. Still there, putting in another crop of wheat—the second.

Q. Then how long did you stay there? A. About a month.

247 Q. Then when you left where did you come? A. I came back to Virginia. Some of my family were sick.

Q. What part of the State were they in then? A. They were at Front Royal.

Q. That was in the fall of 1890? A. Yes, sir.

Q. When did you next see Erle? A. I believe it was about the following April.

Q. Where? A. I saw him in Virginia. He came from Texas to Virginia.

Q. While he was out there in charge of these matters, do you know how he got money to pay the expenses of opening up this farm, and paying off the workmen for building the house, and so forth? A. Why, I sent the money to him. At least, I gave him drafts that he would collect from the banks there.

Q. From what source did you draw that money? A. From what source?

Q. Yes, sir. A. From the Second national bank here.

Q. In this city? A. Yes, sir.

Q. Was that the same bank in which you had deposited these notes belonging to your brother, which Tracy had turned over to you? A. Yes, sir; the same bank.

248 Q. Do you know from what source that money came? A. It came from the collection of those notes.

Q. It was part of the money of your brother's estate? A. Yes, sir.

Q. Did you have any other money with which to carry on these enterprises? A. I did not.

Q. Now, when Erle came east in the spring of 1891 and you met him, state whether or not you had any settlement with reference to this arrangement between you? A. Yes, sir. I settled with him. One crop had been harvested and disposed of. The other was not harvested; but I had full information from Erle and from others as to the condition of the crop, and we estimated that, and I settled with him.

Q. Had you in the meantime paid him any compensation? A. No, sir.

Q. Had you furnished him with any money for himself? A. No, sir.

Q. Now, I want to know whether or not he accounted for the use of the money that you did send him? A. He did, sir; he accounted fully for it.

Mr. Wilson: If there was any accounting or any settlement in writing, I object to the statement as to what was done, and require the production of the settlement or accounts that were passed upon when the settlement was made.

By Mr. Johnson:

Q. Was the accounting by Erle of the moneys you had sent him for disbursement any of it in writing in any form? A. Oh, 249 he brought me vouchers, receipts where he had paid the money, and all such as that; and I had kept an account of what drafts I had sent him, and in the meantime he had notified me by letter when he would make a payment or something of the kind, and I kept up with it pretty well myself.

Q. What became of those vouchers, receipts, letters and memoranda of yours and of his? A. I do not know, sir.

Q. Did you preserve them? A. No sir; I was satisfied with them; I did not keep them.

Q. You say that you settled with him then for the crop that had been harvested and the crop which was growing and unharvested? A. Yes, sir.

Q. What basis of settlement did you agree upon? A. I agreed to give him $1200 in money. In the meantime the settlement came about in this way: I had some money of his that he had earned before, as a boy, and had put in my hands for safe keeping. That was between two and three hundred dollars; I do not remember the exact amount of it. I included that in it, and gave him a draft for $1200 and two notes, one for $200 and one for $325. That was all in payment of his services and his interest in the wheat crop, and for the earnings which I had in my possession and had been keeping for him.

Q. Now, how much, if you can remember, as near as you can tell, did the first wheat crop yield? A. I think the first wheat crop yielded, according to my memory, about $900.

250 Q. And what did you get for the second? A. My memory is about $3,000.

Q. That was $3,900 in all? A. Yes, sir.

Q. What proportion of it was he to have, according to your agreement? A. One-half.

Q. Now, where did you get the $1,200 that you gave him? A. It was some of the money of this estate.

Q. The S. H. Turner estate? A. Yes, sir.

Q. It was part of the money that had come from those notes that Tracy had turned over to you? A. Yes, sir.

Q. Where did you get the notes that you gave him? A. I had them deposited at the bank there, and they had not been collected, and I withdrew the notes, and had them put to his credit.

Q. I mean, where did you get those notes in the first instance? A. I got them from Philip A. Tracy.

Q. They were a part of this estate of your brother, also? A. Part of this estate; yes, sir.

Q. State if at any time after that you ever gave Erle any money? A. I never did, sir.

Q. State if at any time after November, 1888, and before that settlement in April, 1891, you ever gave him any money for himself, for his own use? A. I never did, sir.

251 Q. When, if ever, did you first inform Erle Turner of the character or contents of your brother's will? A. It was, I think, in the summer or fall of 1888. It was in answer to a letter from him informing me of Mr. Tracy's death, and requesting me to send him a copy of the will, and any papers that I might have.

Q. Was Mr. Tracy dead in 1888? A. No, sir; 1898. I have so many dates in my mind that I can't keep them separated.

Q. It was after Tracy's death? A. Yes, sir. He wrote me that Mr. Tracy was dead, and requested me to send him a copy of the will.

Q. You say you did send him a copy of the will? A. I did, sir.

Q. Where did you get the copy of the will that you sent him? A. It was a copy that I had reserved when the will was probated.

Q. I show you a paper marked "Exhibit Erle H. Turner No. 20." State whether or not that is the copy. A. That is the copy I sent him.

Q. Is this "Exhibit Erle H. Turner No. 22," which you have already identified, the list that you sent him at the same time? A. Yes, sir; I sent him this at the same time.

Q. Were those lead-pencil footings, which you have identified in your handwriting on it at the time you sent it? A. Yes, sir; those footings were.

Q. Do you know who pasted these pieces on the back of 252 this paper? A. I did, sir.

Q. I want you to state when, if at all, before sending these papers to your son, you ever informed him of the amount or character of your brother's estate? A. I never informed him before that.

Q. State who, if anybody, you had ever informed of the amount and character of your brother's estate, prior to that time. A. No one but Eppa Hunton.

Q. When was it that you informed him? A. At the time I carried the will to him to have it probated. He made that copy.

Q. Did you ever have a conversation with any one of your other children with reference to your brother's will? A. No, sir; not that I remember.

Q. Did you ever inform any of your children that you had received a part of your brother's estate from Mr. Tracy? A. I never did until a letter I wrote to my daughter Wilmer.

Q. Do you remember the date of it? A. I think it was early in 1889.

Q. In 1889? A. No; in 1899. It is the same mistake; I made it right over again—1899. It was after I had sent the copy of the will to Erle.

Q. Do you remember where she was at the time? A. She was in Virginia, and she wrote requesting information in regard to it.

253 Q. Can you recall the exact date of the letter? A. No sir; I cannot recall the exact date of it from memory.

Q. Do you know of your wife ever having met or conversed with Mr. Tracy—I mean of your own knowledge? A. No sir; not of my own knowledge.

Q. Was your wife ever in this city in your company? A. No, never.

Q. Have you been in Washington since 1891 until the present time? A. No, sir; I have not.

Q. After your settlement with Erle, did you go to Texas again? A. Yes, sir.

Q. Were you present in Texas when the harvesting of that wheat crop was accomplished? A. I was.

Q. What business did you engage in there after that? A. Farming.

Q. On this same farm? A. On this same farm.

Q. What character of farming? A. Wheat raising, principally.

Q. The same thing? A. Yes, sir.

Q. That was in 1891. Did you leave there and go anywhere else after that? A. I did not.

Q. Did you make any visits away from Texas after 1891? A. Yes, sir; I came on one visit to West Virginia, to my family.

254 Q. Was Erle ever out there after your settlement with him in 1891? A. Yes, sir; he came out there; I cannot remember to save my life whether it was the fall of 1892 or 1893. I can't tell now which it was.

Q. How long did he stay? A. He stayed four or five months, I should say from memory.

Q. Did he make more than one visit? A. No, sir; that was all.

Q. How long did your family remain in Virginia, in the East? A. They remained, I think, until January, 1894.

Q. Did they then come out to Texas? A. Yes, sir. I came to Virginia after them and took them back to Texas.

Q. Did you take them all back? A. All except Wilmer. She was at school, off to herself.

Q. Do you remember when it was after that that she came out to Texas? A. I think she came the next year.

Q. 1895? A. I think so.

Q. How long did she remain? A. She must have remained there about a year.

Q. Then where did she go? A. She came back to Virginia.

Q. Do you know for what purpose? A. To teach school, I believe.

255 Q. Had she been teaching prior to that? A. I do not know. I think possibly she had. I am not positive about that.

Q. After her coming East in 1896 to teach, was she ever out there again? A. No, sir. She has never been there since.

Q. When did you next see her? A. It was after I came to the city on this trip.

Q. This present trip? A. Yes, sir; the present trip.

Q. During this month? A. During this month; yes, sir.

Q. Did you ever meet Erle between the time of his last visit to Texas and your coming here? A. No, sir. This was the first time I had seen him.

Q. You stated that your daughter wrote you for information about this estate, and you then wrote her the letter informing her that Tracy had turned over part of it to you.

Mr. Wilson: I object to the statement of the contents of the letter or the supposed letter. If the letter is here, I require the production of the letter that she wrote, and the letter that the witness wrote.

By Mr. Johnson:

Q. Have you got the letter? A. No, sir. She wrote the letter to my wife requesting it—not to me. She wrote it to my wife requesting her to get the information from me; and I then wrote her in regard to it.

Mr. Wilson: I object to the witness stating what he wrote.

256 By Mr. Johnson:

Q. I will ask you to state whether or not prior to that time you had given to either of your other children any information as to the character and contents of your brother's will? A. I had not.

Q. Had you at that time given to either of them any information as to the amount or character of his estate? A. I had not.

Q. Had you at that time given to either of them any information as to having received any part of the estate from Mr. Tracy? A. I had not.

Q. Look at this letter, and state whether or not that is the letter that you sent your daughter. A. Yes, sir; that is the letter that I wrote and sent to her.

Mr. Johnson: I offer this letter in evidence, not as evidence of any of the facts stated, but as showing the date of the communication.

Mr. Wilson: I object to it as incompetent, and as a paper made by the witness after the death of Tracy, and inadmissible to affect or bind the defendants in this case in any way.

"Exhibits T. M. T. Nos. 17–A, Nos. 17–B, Nos. 17–C, Nos. 17–D, Nos. 17–E, Nos. 17–F," see pages 493–496.

(The above-mentioned letter is filed herewith, the several sheets thereof being marked "Exhibit- T. M. T. No. 17, 17–A, 17–B, 17–C, 17–D, 17–E, 17–F.")

By Mr. Johnson:

Q. Mr. Turner, I wish you would state whether or not you continued to have success in the wheat farm after the second
257 crop, the one of 1891? A. No, sir. I met with failures then
for about four years, and lost considerably.

Q. Were all these notes which were turned over by Mr. Tracy to you paid? A. Yes; they were all paid.

Q. And did you receive the money? A. I did.

Q. Now, I will ask you to state as nearly as you can what disposition you made of the money you got from those notes. A. It will be a pretty long statement. I first paid the funeral expenses and the ebts and medical bills of my brother, and the costs of probating ie will, and counsel fees and my own travelling expenses and genral expenses in the matter, which amounted to about $630, as near s I can remember. I paid for a home for my niece, Mary Rust, in 'ront Royal, Virginia, $1350; and I gave her about $150 in money.

Q. Did you take a deed for that property? A. Yes, sir.

Q. In whose name? A. I took it in my own name.

Q. Look at that paper, and state if that is the deed. A. Yes, sir; hat is it.

"Exhibit T. M. T. No. 18," see page 497.

(The above-mentioned paper was thereupon offered in evidence y counsel for the complainants; and the same is filed herewith, narked "Exhibit T. M. T. No. 18.")

By Mr. JOHNSON:

Q. Did Mrs. Rust get possession of the property? A. Yes, sir.

258 Q. Did you ever have possession of it? A. I never did.

Q. Do you know whether or not she still has possession of t? A. I think she has, sir. I never heard anything to the conrary.

Q. Can you tell us any other disposition you made of any part of the money? A. Yes, sir. I paid some notes that were due by my niece Agnes Kerfoot, and her husband, which amounted to about $500. I gave to my sister at various times in small amounts about $200. To other relatives of my brother at different times I gave about $600. For a lot in Vernon, Texas, I paid $750. I improved it with a residence, etc., costing about $1750, and furnished it with furniture amounting to $500. I paid for a farm $2,500.

Q. Is that the farm you have testified about heretofore? A. It is.

Q. The one you bought from Greer? A. The one I bought from Greer. For improvements upon the farm about $800. I paid for live work stock and stock generally, $2100; and for farm machinery $1100. I paid for medical treatment of my son, E. H. Turner, at Atlanta, Georgia, early in 1889, $400.

Q. Was that while you were living in Louisiana? A. Yes, sir. For the education of my daughter, Wilmer, between the fall of 1891 and June, 1895, I paid about $800.

Q. I will ask you to state whether that was simply her tui-
259 tion, or whether it included all her expenses at the schools.
A. It included her expenses generally. I paid a debt on my wife's home in Louisiana, early in 1889, of $300. I paid some accounts and debts of my own in Louisiana in 1889 amounting to about $300. I paid in 1889, in Louisiana, for two horses $250; two Jersey cows $100; and three cows $75. I gave to my wife at different times between June, 1890, and January, 1895—January, 1894, I guess, as near as I can remember; I can't remember the date exactly—various sums for the support of herself and younger children while in Virginia, amounting in all to about $1500.

Q. Which younger children do you mean? A. Ashby and Lunette.

Q. Was Wilmer then at school? A. Wilmer was off at school. I paid for travelling expenses for myself and wife and the three younger children and my sister and niece at different times to and from different places—for instance, Virginia to Louisiana. Louisiana to Texas, Texas to Virginia and Virginia to Texas—in all about $1250.

Q. Now, with reference to that travelling, were your sister and niece both grown? A. Yes, sir; they were.

Q. You did not take Wilmer travelling during any of the time she was at school, did you? A. Not while she was at school; but I took her to Texas and brought her from Texas to Virginia.

260 Q. Did they accompany you every time you travelled anywhere? A. Well, I went from Virginia to Louisiana with myself and sister and niece. I then brought them back to Virginia and made the trip back myself. I then took my whole family to Texas; and I had to travel there in looking for a place for a location. In the meantime my sister and niece had come from Virginia again out to Texas. I had that expense to pay. I then brought the whole family back to Virginia from Texas, and then I made a trip to Virginia to see the family and back to Texas; and then I came to Virginia the second time, and took my wife and the two younger children back to Texas, which amounted to about that sum, sir. I paid for opening up the farm in Texas, and for labor and board of laborers and feed for work stock and incidental expenses of the farm from the fall of 1888 to June, 1889, about $1050. I paid the family expenses from January, 1889, to June, 1890, eight months in Louisiana and ten months in Texas, which aggregated a thousand dollars. I gave in payment to Erle H. Turner $1200, one note for $200 and one note for $325 for his services and interest in two wheat crops and for money of his own that he had put in my hands for safe keeping, earned when a boy. That is about as far as I can account for the money. The balance I lost in farming in Texas.

Q. Now, what became of the property in Vernon—the house and lot in Vernon? A. I had to borrow money at one time there, and gave a deed of trust on that property; the panic of 1893–'4 came on, and the property went down to such a degree there
261 that I could not raise money to pay it, and had to finally give the house and lot in payment of the claim.

Q. (Handing paper to witness.) Is that the deed of trust? A. Yes, sir; that is it.

"Exhibit T. M. T. No. 19," see page 499.

(The above-mentioned paper was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit T. M. T. No. 19.")

By Mr. JOHNSON:

Q. Were you sued for that debt on the Vernon house? A. Yes, sir; a suit was commenced.

Q. Look at that paper, and state if that is the process. A. Yes; that is the citation, citing me to answer.

"Exhibit T. M. T. No. 20," see page 503.
(The above-mentioned paper was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit T. M. T. No. 20.")

By Mr. Johnson:

Q. I show you a deed dated the 4th of September, 1894, purporting to be executed by you and your wife, and purporting to granto Wilmer Turner, Ashby Turner and Lunette Turner certain propt erty. Look at that deed and state whether you and your wife executed it as it purports to be? A. Yes sir; this is the deed I made of the farm to the three children.

"Exhibit T. M. T. No. 21," see page 505.
(The above-mentioned paper was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit T. M. T. No. 21.")

By Mr. Johnson:

262 Q. I show you a paper that purports to be a bill of sale from you to Wilmer Turner, Ashby Turner, and Lunetter Turner of certain chattels. I ask you to state if that was executed by you? A. It was.

"Exhibit T. M. T. No. 22," see page 513.
(The above-mentioned paper was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit T. M. T. No. 22.")

By Mr. Johnson:

Q. Both of these papers, this deed and bill of sale, appear to have been recorded in the record office of Wilbarger county. Will you state who recorded them? A. I cannot state from memory. The officers change there.

Q. I mean who filed them for record? A. Oh, I had it done. I thought you referred to the officers. I had it done.

Q. Did you ever deliver either of those deeds to either one of the three children named therein? A. I did not.

Q. Did you ever exhibit them to either one of them? A. No, sir.

Q. Did either one of them ever have possession of the farm *of* the personal property mentioned in them? A. No, sir.

Q. Who had possession of the farm after the execution and recording of that deed? A. I did.

Q. Who had possession of the personal property? A. I had.

Q. What became of the personal property? A. It was consumed in its use.

263 Q. By whom? A. By me.

Q. Was this land which you call the farm, and which is described in the deed, Exhibit No. 21, private land, or was it land in which the State had an interest? A. It was what we call State school land.

Q. Was anything required to be paid to the State? A. Yes, sir. There was an annual interest on the purchase price from the State of about sixty odd dollars. The land was then rated by the State at $2 an acre, and five per cent. interest on it had to be paid yearly to the school fund.

Q. Who paid that interest? A. The owner of the land.

Q. Who paid it while you were in possession of it? A. I paid it for several years. Finally I failed to pay it; I was unable to do so.

Q. What happened then? A. It was forfeited for non-payment of insurance and reverted to the State.

Q. Do you remember about when that occurred? A. In 1896; I believe. I think so.

Q. Do you remember where Wilmer was in September, 1894? A. She was in Virginia.

Q. Do you know what she was doing? A. Teaching school, I believe; at least I was so informed.

Q. I want to know whether or not you informed any one of your three children of the making of that deed and bill of sale? A. I did not.

264 Q. What was the purpose of making and recording those papers? A. It was at the time we had a fearful panic there, and I was in debt, and feared that the property would be seized and sold, and I was trying to save it for the children. That was my object in making that transfer.

Q. After the land was forfeited to the State for non-payment of dues, did you have anything further to do with it? A. Yes, sir. I filed on or purchased the land in my own name again.

Q. From whom? A. From the State. It was subject to purchase from any one.

Q. You mean it was reoffered to the public? A. Yes, sir; it was reoffered.

Q. When it was reoffered, was it offered at the same or a different price by the State? A. It was reclassified, and offered at $1 an acre with three per cent. interest.

Q. Then did you continue in possession of it? A. Yes, sir.

Q. Did you pay the money due the State from that time? A. Oh yes; the interest.

Q. How long did you continue in the possession of it? A. Until this year.

Q. What time of this year? A. It was a month or two ago—a couple of months, maybe.

265 Q. What happened then? A. I sold it.

Q. To whom? A. To a man named Lockett.

Q. For how much? A. I sold it for $5,000, less about $400 deed of trust on it, the payment of which he assumed.

Q. That would be $4,600? A. Yes, sir.

Q. Did you inform any of your children of your intention to sell that property at that time? A. I did not.

Q. Did you inform their counsel who were engaged in this proceeding? A. I did not.

Q. When did you first give any information on the subject of this sale to them or their counsel? A. My son Ashby knew of the sale at the time I made it, and my wife knew. I told them then. I did not tell Erle or Wilmer until I saw them here on this trip. My other daughter was off at school at Georgetown, Texas, and I did not tell her.

Q. Did you make any communication to the counsel or the lawyers of your children, of that fact? A. I did not.

Q. When did you first apprise them of it? A. After I came to Washington.

Q. Did you inform any one of your children or their counsel of the fact of the forfeiture of the land by the State? A. No, sir; not that I remember. My wife knew it was forfeited.

266 Q. Did you inform any of them of your intention to file an entry on it afterwards, and of the fact that you had filed such entry? A. I do not know that I did. I do not remember that I did.

Q. Did you give them any part of the proceeds of the purchase-money? A. No, sir.

Q. Have you ever offered any one of them or their counsel any part of it? A. I have not.

Q. Have you in any way subjected any part of that purchase-money to their use or control? A. I have not.

Q. Do you remember how much you got for the farm in Minden, Louisiana, belonging to your wife? A. $1,000.

Q. Who received that money? A. I did.

Q. Do you remember or do you know who made the transfer of the two notes belonging to your brother's estate which you turned over to Erle Turner? A. I made the transfer.

Q. I mean at the bank. A. At the bank.

Q. You stated with reference to the Vernon property that you were sued for the debt secured by that mortgage? A. I did.

Q. And conveyed the property to the owner of the note? A. Yes, sir.

267 Q. Did you receive any compensation for the property? A. None but the amount of the debt.

Q. You conveyed it in satisfaction of the debt? A. Yes, sir.

Mr. WILSON: You mean the lot in town?

A. Yes, sir; the house and lot in town.

By Mr. JOHNSON:

Q. About what was the size of that lot? A. It contained an acre or more.

Q. Was it in town; I mean in one of the regular streets of the town, or was it outside? A. It was on the outskirts of the town, as it were. I did not want to have a residence right up in the business part of a little town. There were no business houses around it. There were residences.

Cross-examination.

By Mr. **Wilson**:

Q. Where is your wife, Mr. Turner? A. I left her in Texas.

Q. Where? A. At Vernon.

Q. Is she with your other children? A. One child is with her. One son is in Vernon—Ashby.

Q. Where is the other daughter, the other children? A. The other daughter is at the Southwestern University at Georgetown.

Q. Georgetown, Texas? A. Georgetown, Texas.

268 Q. At what house do they live, in Vernon? A. My wife is boarding with Mr. Duncan, the Methodist minister there, and my son has a room and boards at the hotel or some place. I don't know.

Q. Where is your own residence? A. I have none now, sir.

Q. Where were you stopping when you left Texas to come here? A. I was stopping in Vernon.

Q. Were you living with your wife? A. Yes, sir. I was rooming with my son and boarding at the eating-houses there. I had no home then. I had sold my farm and did not know where I would go or what I would do.

Q. Are you now on good and affectionate terms with your wife and children? A. I am, sir, so far as I know.

Q. By whom is your wife supported? A. By me.

Q. By whom is your daughter supported—your younger daughter? A. She is supported by me.

Q. By whom is your son Ashby supported? A. He has been supported by me until now he is of age, and I expect him now to make his own support.

Q. Are you connected with a church in Vernon? A. I am not, sir. My wife is.

Q. What is your present occupation? A. Well, I can't claim that I have any just at this time.

Q. What, if any property have you now in your possession,
269 real or personal? A. I have no real property and no personal property at this time.

Q. From what do you derive any income? A. I have derived an income in the past from my work and business generally, farming, etc.

Q. What do you derive any income from now, and how do you obtain the money with which yourself, your wife and your children are supported? A. I have paid it by the products of my farm heretofore, and from the proceeds of the sale of the farm—what little money I had left. I have been using that for current expenses until I can decide what I will do.

Q. What disposition did you make of the money you received from the farm? A. I have some of it.

Q. How much? A. I can't say exactly how much.

Q. About? A. I gave my wife a portion, and some I paid for other debts.

Q. How much have you on hand now? A. Well, I could tell you better if you will give me a little time to calculate and make some figures.

Q. State it approximately? A. I can't tell you right now.

Q. As much as a thousand dollars? A. No, sir; not as much as that.

Q. Whatever money you have is on deposit somewhere? A. Yes, sir.

270 Q. Where? A. In Vernon.

Q. In a bank? A. No, sir; part of it is in a safe of a friend of mine.

Q. How much? A. I don't remember. It is five or six hundred dollars, I think.

Q. Where have you any more? A. I have not collected the money for the place yet, all of it.

Q. How much is still due on the place? A. I couldn't tell you those figures without I can refer to some memorandum, or something. I will have to figure up a little. I can't answer it all at once.

Q. Be good enough to examine any memoranda you have and tell me tomorrow morning as accurately as you can what money you received in cash from the farm and what money is still due you? A. I will, sir.

Q. And in what shape it is. A. I will.

Q. When did you leave Louisiana? A. When did I leave there?

Q. Yes, when did you leave Louisiana and your home in Louisiana to go to Texas? A. In 1889, I believe it was.

Q. In what occupation had you been engaged up to that time? A. In Louisiana?

271 Q. Yes. A. Why, I had been engaged in various occupations. I have stated that in my former testimony at length.

Q. What was your last occupation before leaving Louisiana? A. I was a deputy clerk.

Q. Where was your office? A. Where was the office?

Q. Where was your office? You have great difficulty in hearing me, but you did not have the least difficulty in hearing Mr. Johnson.

Mr. JOHNSON: Mr. Johnson is sitting a great deal nearer to the witness. Will you change places, Mr. Wilson?

Mr. WILSON: No; I am near enough.

(The question was repeated as follows:)

"Q. Where was your office?" A. Why, the clerk's office was in the court-house.

Q. You are yourself familiar with the court's proceedings in Louisiana? A. Oh, of course I was then, sir.

Q. And familiar with the laws of Louisiana? A. No sir; I can't say that I was.

Q. After you left Louisiana what, if any, income did you have from any occupation or from any moneys or from any other source except the money that your received from Mr. Tracy in 1888?

Mr. Johnson: I object to that as irrelevant.

A. Why, I had no revenue except from the farm and the business I was conducting there.

Q. What means had you after leaving Louisiana of supporting your family except with or out of the moneys you obtained 272 from Mr. Tracy, and the investments you made of that money? A. Why, I had no means. I had no money.

Q. You had no occupation. You had no employment? A. Only in this business, farming, etc.

Q. Except in connection with the use and investment of the money that you obtained from Mr. Tracy? A. Yes, sir.

Q. What, if any, means for the support of the family, apart from those furnished by yourself, did your wife or any of your children have? A. They had none, sir; my wife owned the home in Louisiana. I finally sold that.

Q. That, I understood you to say, you sold for a thousand dollars? A. Yes.

Q. And took the money yourself? A. I used it, yes, sir; in the business out there.

Q. Apart from that money then, there was no money? A. No, sir.

Q. And no funds? A. No, sir.

Q. That was available for or that was used to support the family? A. No, sir; only what I made from my operations there.

Q. When you say "operations" you mean in connection with the farm? A. Yes, sir.

Q. Did you keep any account, systematically, of your expenditures for your family or with reference to the farm? A. No, sir; 273 not a systematic account.

Q. Can you state now approximately what have been the yearly and ordinary expenses of your family since 1888? A. No, sir; I could not only as I have given the figures here. That is as near as I can arrive at it.

Q. Can you give approximately any estimate of the actual family expenses for any one year since 1888? A. The nearest I can come is what I stated about their expenses, for about eight months in Louisiana and ten months in Texas, I believe. As near as I can state it, that is about a thousand dollars.

Q. A year? A. For that time.

Q. How was your family, consisting of yourself, your wife and your children, clothed after 1888, and with what means, what moneys? A. It was with money that I furnished for them.

Q. And moneys that you had obtained from Tracy? A. Partially, so; yes.

Q. What other? A. Partly my own work, you know.

Q. What work? A. On the farm there; the products, etc.

Q. How were your children educated after 1888? A. I paid for their education.

Q. In the same way; out of the same funds? A. Yes, sir.

Q. And your own expenses were met and paid in the same 274 way? A. Yes, sir. My own expenses were very light. I paid them the same way.

Q. Have you any account now of your receipts and expenditures since 1888, in book form? A. No, sir.

Q. You kept no books? A. No, sir.

Q. And have no memoranda? A. No; no regular memorandums.

Q. You had in your hand when you were testifying this morning a memorandum book. When was that made? A. Oh, I only made some memorandums about the amount that I had expended in this matter, as near as I could remember, and all, to get them rather in a shape that I could tell you.

Q. When did you make that? A. I couldn't tell you. It was lately.

Q. Before you came here? A. No, sir; I made it after I came up here.

Q. You brought with you no books or no memoranda from which you could be able to give any definite statement? A. No, sir.

Q. As to how you had expended this money you received from Tracy? A. Only the statement I have given, as near as I can get at it.

Q. You visited your brother just before his death, I understood you to say? A. Yes, sir.

Q. In—what is the name of the place? A. Fauquier county.

275 Q. And you went back there after your interview with Mr. Tracy here? A. Yes, sir.

Q. Did your brother have any other property? A. No, sir; not that I know of.

Q. Not that you have any knowledge of? A. No, sir.

Q. That was all that he had? A. All that I had.

Q. All that he had? A. All that he had as far as I know.

Q. Did he have any brothers or sisters living in Fauquier county? A. No, sir; he had one sister. She was not living in Fauquier.

Q. Where was she living? A. I think she was staying principally in Maryland at that time.

Q. Did you visit her when you were here? A. Yes, sir.

Q. Did he have any nephews or nieces? A. Yes, sir; he had some nieces and some nephews.

Q. Where did they live? A. Some of them lived in Fauquier and some lived over in the valley of Virginia, and some lived in Texas.

Q. So far as you know, was any account rendered of the property that constituted your brother's estate, to the court in Fauquier county? A. No sir; not that I know of.

Q. Did you make any return or did you keep any account of the moneys you spent there for funeral expenses and costs, etc.? A. Of the burial expenses and such as that, sir?

276 Q. That is the question; yes. A. Oh, no, sir; not regularly. I made some little memorandums of it, I suppose.

Q. In what house did your brother die? A. He died at a farm called Moorland, in Fauquier county.

Q. Who lived in it? A. Why, at the time a niece, Mary Rust, was living there.

Q. He lived with her? A. He came there just a short time before his death.

Q. Did he have any home or house of his own? A. No, sir.

Q. He had no personal property of any kind? A. Not that I know of, sir.

Q. What became of his wearing apparel? A. Why, he had very little, I think only one suit. He was a man that never had much clothing. He was very close.

Q. He was very close? A. Yes, sir.

Q. In what business was he engaged? A. Why, I couldn't tell you about that, because I had been absent from the State thirty years or more, and I understood from others—now, that will be only hearsay—what he had followed.

277 Q. What was it? A. I had heard he had been a merchant there at one time; an agent on the railroad at some station, I think, and then he dealt in cattle, buying and selling cattle, I think at one time. I heard all that. I don't know it.

Q. The only evidence of the ownership of any property whatsoever that you found was that list of which you have spoken, was it? A. Yes, sir.

Q. Nothing else? A. That is all.

Q. You have no idea when he began his transactions with Mr. Tracy? A. No, sir.

Q. And of what those transactions consisted, except that one piece of paper? A. That is all.

Q. Did he keep any books? A. No, sir.

Q. You did not find any trace in any of his possessions of any account or of any list or of any letters from Tracy? A. Only that.

Q. That single paper? A. That list of notes and the will.

Q. Where did you find those? A. Why, they were in his trunk. He showed them to me before his death—told me about them.

Q. What else was in his trunk? A. Only his few clothing, and so on.

278 Q. Nothing else; no papers or anything else? A. No, sir; no papers of any importance. There may have been a letter or two, you know.

Q. Nothing from Tracy? A. Nothing from Tracy—nothing in the world bearing on the case.

Q. When did you consult Mr. Hunton, Jr.? A. Immediately after my brother's death; the next day or two afterwards.

Q. Before you came down here? A. Before I came down here.

Q. And he came down here with you at your request? A. Yes, sir; he came and we met at the National hotel and went from there to the General Post-Office Department.

Q. So you said. You have seen the paper which is marked Exhibit T. M. T. No. 2 and have identified the signature thereto as your own, have you not? A. Yes, sir; I have.

Q. That is your signature? A. Yes, sir.

Q. You sign that as "Natural tutor and agent for my minor children"? A. Yes, sir.

Q. What did you mean by that? A. I did that at Mr. Tracy's dictation, his suggestion I supposed he meant (I know I meant) that I was their natural protector. That was all.

Q. Did you know at that time that in Louisiana the word "tutor" had any particular meaning? A. Oh, well, yes, sir; I knew that there it did have a meaning.

279 Q. What meaning did it have, according to your understanding of it? A. Well, it is a position something similar to guardian, as I understand it.

Q. And you signed that, did you, on behalf of your minor children? A. Yes, sir; I signed it just as it is there.

Q. Did you within a few days after signing that write to your wife and tell her that your brother had left his property to you? A. I don't think I did, sir. I can't say that I did. I have no memory of writing such a thing. I may have written to her that my brother had left property to us. I don't know what I wrote. It has been a long time, and I can't tell you.

Q. Did you write to her in such a way as to conceal from her the truth, and intend to do so? A. I didn't intend that my children should know the property was left to them.

Q. Why? A. Because I thought it would not be good for them to know it.

Q. Why? A. Well, sir, it was my opinion that it would not be well for them to know it.

Q. You intended, did you not, to take care of the property for them? A. I did indeed, sir.

Q. Undoubtedly, in good faith? A. I did, sir.

Q. And to treat the estate as though it was theirs, really?
280 A. Yes, sir; I did intend to do that, and I didn't want the children to know it, for fear it would make them disposed to want to spend money, or such as that. I thought it would be best for them not to know it.

Q. You thought you could take care of it for them yourself? A. I thought, so, sir.

Q. Better than they could? A. I thought so, sir.

Q. That was your sole motive? A. That was my motive; yes, sir.

Q. This bears date the 30th of November, 1888. At that time you received these notes that are described in this paper? A. Yes, sir.

Q. What did you do with them at once? A. I deposited them in the Second national bank. Mr. Tracy went with me and we deposited them in there.

Q. And you opened your account there? A. Yes, sir. I had to deposit some money with the bank before they would take the notes. I opened it, I think, with a deposit of a hundred or two dollars—I don't remember now; something like that.

Mr. Wilson: You have a copy of that account, Mr. Johnson?

Mr. Johnson: Yes; I am perfectly willing to produce it.

Mr. Wilson: I have one also. I only wanted to get the dates.

By Mr. WILSON:

281 Q. The first deposit was made on the 1st day of December. That was $150? A. Yes, sir. I know it was a small amount.

Mr. JOHNSON: I think if the witness is to be interrogated about it, it had better be exhibited to him.

Mr. WILSON: I have no objection in the world.

(The paper was handed to the witness.)

By Mr. WILSON:

Q. I want to know, after you made the deposit of cash, what was the course of business, what you did with reference to the deposit of the notes, whether they were deposited all at once or from time to time? A. They were deposited all at once, sir, and they made me out a list of notes as they took them and went over them.

Q. Did they enter them on your book? A. They entered them on a little blank book; yes, sir.

Q. A pass book? A. Yes, sir.

Q. Have you got that? A. No, sir; I don't think I have. It may be among my papers in Texas.

Q. But you haven't it here? A. No, sir.

Q. Please look at the account or a copy of the bank's account with you and state if it refreshes your recollection in regard to the way the notes were deposited.

"Exhibit T. M. T. No. 23," see page 512–515.

(By consent of counsel, the paper above referred to was marked "Exhibit T. M. T. No. 23," and it is admitted it is a correct transcript of the account of the witness at the Second national bank. The said paper is offered in evidence, and is filed herewith.) 282

By Mr. WILSON:

Q. The course of business was that the notes as paid or the amount of the notes as paid was deposited to your credit in the bank? A. Yes, sir.

Q. And then you drew your check? A. Yes, sir.

Q. Have you got either your bank book or your check book? A. I brought the canceled checks.

Q. You have them all here? A. I think pretty much all, sir. I may have lost one or two. I gave them to Mr. Johnson at his request.

Q. Then all the notes that were deposited by you were, from time to time paid? A. They were all paid, sir.

Q. Into the bank? A. Yes, sir.

Q. And the proceeds were checked out by you? A. By me.

Q. From time to time? A. Yes, sir.

Q. When was the last check drawn; what period does it cover? A. It seems it was May 19, 1891. It seems to be about that.

Q. Up to that time the notes from time to time had been paid and you had withdrawn the proceeds? A. Yes, sir.

283 A. And there was a balance due from you of $27.34? Q. Well, I don't know about that. There must have been some error in that. I don't know.

Q. Your bank book was settled, was it, and returned to you? A. Yes, sir. I had one little bank book that was written up, and the last time I don't think it was written up, but I think they gave me the amount that was still on hand, and I attempted to draw for it, but there was some miscalculation there. I think they made that discrepancy. I knew nothing of that until afterwards.

Q. When these notes were deposited, as I understood you to say, they were all deposited at once? A. At once; yes, sir.

Q. With the bank? A. Yes, sir.

Q. And entered on their books, so far as you know? A. So far as I know.

Q. You saw that done? Do you know what disposition the bank made of the notes when they received them? Did you see? A. No, sir; I don't know.

Q. Were they gone over and compared by Tracy or checked off with that list in any way? A. No, sir; I had checked the notes off with the list beforehand that we settled by.

Q. But that was not done at the bank? A. No, sir; I just deposited the notes. Mr. Tracy was with me. He seemed to be acquainted with the bank very well, and introduced me, and I left the
284 notes there and had to call I think it was the next day for the little book, giving a list of the notes.

Q. Do you know where Mr. Tracy kept his account at that time? A. I do not, sir.

Q. I understood you to say that the money he paid to you was paid to you in money and not by check? A. Yes, sir.

Q. Is that right? A. That is right, sir.

Q. I understood you to say that he paid you the first day at the post-office some $400? A. Yes, sir.

Q. How much was it? A. I think it was $439.25. I think that was the amount, sir.

Q. What did you do with that money? A. I used that in the payment of the expenses there in Virginia, the burial and so on.

Q. You did not deposit that? A. No sir; I didn't deposit that. I may have deposited—well, out of some money that Mr. Tracy gave me. I had some money myself when I came up here, of course, I don't remember now how much. I had to deposit that $150 out of some of it, in order to get the bank to take the notes.

Q. The $150 was taken from the money that Tracy gave you or from the money you had, indiscriminately? A. Yes, sir.

Q. You did not take any separate account of it so as to
285 know where that came from? A. No sir. I think more than likely it came out of the money that Tracy gave me.

Q. On what day did you leave Washington with reference to the date of this receipt? A. I couldn't tell you, sir, what date I left.

Q. This receipt is dated November 30th. What day did you leave Washington? A. I couldn't tell you, sir.

Q. Was there any one with you here at the hotel except Mr. Hunton? A. No, sir.

Q. Did any of your family come here? A. No, sir.

Q. When you went to Louisiana, who did you take back with you? A. Why, my sister and her niece went with me from Virginia to Louisiana.

Q. To make a visit? A. Yes, sir.

(The further taking of these depositions was thereupon adjourned until Thursday, May 23rd, 1901, at 11 o'clock, a. m.)

286 WASHINGTON, D. C.,
May 23rd, 1901—11 o'clock a. m.

Met pursuant to adjournment and adjourned until Monday morning, May 27th, 1901, at 12 o'clock.

WASHINGTON, D. C.,
May 27th, 1901—12 o'clock m.

Met pursuant to adjournment.

Present on behalf of the complainants, Mr. Johnson.

Present on behalf of the defendants, Mr. Wilson.

Cross-examination of THOMAS M. TURNER resumed.

By Mr. WILSON:

Q. At the last hearing I asked you to ascertain what money is still due and unpaid in respect of the sale of the farm near Vernon. Can you answer now? A. I think I can, sir. (The witness produces a memorandum). Do you wish me to give you a statement of the whole transaction?

Q. If you please. A. I sold the place, and the consideration was $5,000. There was a deed of trust for $400 on the property, which the purchaser assumed. I owed the purchaser $205. That from the $5,000 left $4,395. I paid $200 in debts from that, which left $4,195. I owed my wife her home in Louisiana that I sold in 1893, I believe $1,000, and eight years' interest at 10 per cent., which is
the legal rate in Texas. That made $1800. I used of my
287 wife's individual money, about the year 1870, $200. Interest
on that to the present time would make altogether $680.
That would be $2,480 that I paid my wife, that was due her. That left $1,715. I owe about $100 in small debts there that I will have to pay out of that, which would leave $1,615 now that is community property between myself and my wife. According to the laws of Texas she would be entitled to half of it and I half. I have that much in money.

Q. You have $1615 in money? A. Yes, sir; at least, after I pay that $100 I will have that.

Q. And in what form is that? A. Sir.

Q. Is that in the form of cash? A. Yes, sir; it is in money, cash.

Q. Where is that? A. That is in bank, in Vernon.

Q. How long has it been in bank? A. It has been since a short time before I left Texas I guess.

Q. Have you any other money in your possession or under your control or held by any person for you? A. I have not, sir.

Q. What, if any, real estate have you now standing in your own name anywhere? A. None, sir, without the house and lot I bought for my niece, Mary Rust, in Front Royal, may be in my name.

Q. That was the house you paid $1350 for? A. Yes, sir.

288 Q. And I understood you to say the other day you took the deed in your own name? A. Yes, sir; I took that in my own name.

Q. Have you ever made any transfer of the title? A. I have not, sir. I always considered it hers, Mr. Wilson, but I might say that her husband was a little reckless, and I thought it best, perhaps, to keep it in that shape.

Q. What is her name? A. Mary Rust. I make no claim to the property whatever, sir. It is hers, I consider.

Q. And with the exception of the $1650 and this piece of real estate, you have nothing now in your own name in the way of personal property or real estate? A. I have not anything, sir. That is all.

Q. You know what this proceeding is brought for, what is sought to be done by this suit, do you not? A. I have never seen the petition, or whatever you would call it. I don't know what you would call it here. I don't know the terms of the suit, sir. I have an idea of it, of course.

Q. What do you understand it to be for? A. I understand it is a suit of my children for their interest in my brother's estate.

Q. They are seeking to recover from the estate an amount of money that is exactly the amount that was paid to you, among other things. Is not that so? A. I guess so, sir. I understand they are bringing a suit to get their interest in his estate from the estate of Mr. Tracy.

Q. And to recover the equivalent money that was paid to you?

289 A. Well, I don't know. That is a matter I can't tell you, for I don't know what the terms of the suit are. I don't know that.

Q. Do you know the ground upon which liability on the part of Tracy's executors is asserted? Do you know what the ground is of the liability that they now seek to enforce against Tracy's executors?

Mr. Johnson: I object to the question on the ground that the subject-matter of it is irrelevant and immaterial, and that as the witness has stated he has never seen the papers in the proceeding, his speculations as to the possible character of the suit are if possible more irrelevant than his actual knowledge would be, if he had any.

A. I do not, sir.

Q. The money that you used in buying this lot for your sister, for instance, was the money belonging to the estate of your brother, was it not? A. The money I used in buying a lot for my niece.

Q. Your niece, yes. A. It was that money, sir.

Q. You understood it did not belong to you? A. Well, that part of it I did not consider belonged to me because he had directed me to buy a home for her.

Q. Your brother had? A. Yes, sir.

Q. When did he direct you to do that? Before his death? A. Yes, sir.

Q. And you made the purchase in obedience to his request? A. his request or direction; yes, sir.

Q. That was verbal, I suppose—made to you verbally.
290 A. Yes, sir; it was made to me verbally.

Q. And in respect of the $150. A. Well, he directed me to buy her a home that would not cost over $1,500. I bought the home for $1350, and then supplied her with the balance to get some things with.

Q. You gave her the $150? A. Yes, sir.

Q. And took it in your own name? merely because you did not want to have to subject it to the chance—— A. I thought it would be best, sir.

Q. —of disposition by her husband? A. But I never shall make any claim for the property. I don't propose to do that, sir. It is hers, I consider, and may have been transferred to her by tax sale. I couldn't tell you. I don't know.

Q. You never gave yourself any further concern? A. No, sir.

Q. You were doing what you understood your brother had directed you to do, wanted done? A. Yes, sir; that is what I considered. I turned the property over to her, put her in possession of it, and have known nothing of it since. I had nothing to do with it since at all.

Q. Did your brother give you any directions or express to you any other wish in respect to the use of his money?

Mr. Johnson: I object to all this line of examination as incompetent and inadmissible, as the course of the testator's estate by his will could not be changed by any verbal direction to the witness or any other person, and I make the same objection to the preceding question and answer.

291 A. He also directed me to pay some notes that were due by another niece, Agnes Kerfoot and her husband, that amounted to about $500—in the neighborhood of it somewhere—which I paid.

Q. Do you know the amount? Have you any means of stating the amount? A. No sir. I could not give you the exact amount. It approximated $500.

Q. When was that done? A. That was done, I believe, in 1889, I think, sir.

Q. Shortly after you got the money? A. Oh, yes.

Q. Can you state whether he expressed any other wish or gave you any other direction? A. Not about any purchases or anything of that kind. That was all, sir.

Q. In respect of any disposition of his estate, did he give any direction or express any wish? A. No, sir; only that he had left it to my children, and wanted me to manage it.

Q. Did he express a wish that you should manage it? A. That I would see to it, you know.

Q. That you would see to it that it was properly used for your children? A. Yes, sir.

Q. That was his request? A. That was his request.

Q. And that you undertook to do? A. I did, sir.

Q. This $1615 which you have in hand. Will you state whether you consider that as belonging to your children? A. No, 292 sir; I do not. I have made that myself since the other property was all gone. That has been my own work. I entered that land, bought it from the State, and went on with my farming operations there on my own business, and I have made that money myself.

Q. You made it out of the same property, however, the farm? A. No, sir; it is property that I got from the State. It was forfeited to the State.

Q. I understand, but it was the same farm, though, was it not? A. It was the same farm, yes sir, the same piece of land.

Q. You are speaking of the Vernon farm, of course? A. The Vernon farm; yes, sir.

Q. It was first bought by you and then it reverted to the State, and you bought it from the State? A. I bought it from the State.

Q. You have been working it ever since, and you have derived $1615 net from the sale? A. Yes.

Q. And that you claim to be your own? A. Yes, sir; I consider it belongs to myself and my wife. It is community property.

Q. And the money which was originally used in buying the farm is the money from your brother's estate? A. The first purchase, yes, sir.

Q. And in this proceeding it is sought to recover that, in part, is it not, from the executors? Is that what you understand? A. How is that, Mr. Wilson?

293 Q. In this proceeding it is sought to recover that amount in part as constituting the part of the estate that was in Mr. Tracy's hands? A. I don't know, Mr. Wilson, about that. You see I can't say. I have had nothing to do with the suit in any way in the world, only to answer questions that I have been asked.

Q. When did you first know that this suit was contemplated? A. I can't tell you exactly, sir.

Q. As nearly as you can? A. I don't remember the date. Mr. Johnson wrote me for some information which I sent him, but I can't remember when it was.

By Mr. JOHNSON:

Q. The Mr. Johnson you refer to is one of the counsel for your children? A. Yes sir; Carlisle & Johnson, I should say, wrote me for some information.

By Mr. Wilson:

Q. I asked you the other day if you had the checks on which you drew the money that went to your credit in the Second national bank, and I understood you to say you had? A. Most of them.

Q. If you have them I wish you would produce them, please. A. Yes, sir; Mr. Johnson has them. I have no objection in the
294 world to producing them. I don't think they are quite all
there. I think there is a few I couldn't find. I produce checks numbered as follows, which are all that I have or have been able to find:

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, and a charge check dated July 9, 1889.

Checks 43, 51 and 52 are missing.

"Exhibit T. M. T. No. 23," are checks from 1–64, and one charge check, see pages 516–536.

(The checks just produced and identified by the witness are offered in evidence by counsel for the defendants, and the same are filed herewith, fastened together in one bundle, marked "Exhibit T. M. T. No. 23.")

By Mr. Wilson:

Q. Do you know how much these checks amount to that you have here? A. I do not, sir, without adding them up.

Q. Do you know for what items of your account you have not got checks? A. I do not, sir. I haven't gone over it to see.

Q. You can tell by examining the checks and comparing them with the account, can you not? A. Possibly. I can't say until I make the examination.

Q. The check numbered 1 is payable to your order. Do you know what that was given for, or what was done with the proceeds? The amount is $300. (The check was handed to the witness.) A. I can't remember, sir. I used it.

Q. Check No. 2 is payable to the order of Philip A. Tracy,
295 $265. What was that for? A. I can't remember, sir, now
to save my life.

Q. Do you remember giving him a check? A. Yes sir; I guess I did. I don't remember it exactly.

Q. What was it for, you do not know? A. I don't remember what it was for.

Q. No. 3 is a check to Mary M. Rust for $100. Do you remember what that was for? A. I can't state positively. I can't state whether it was a part of the $150 that I gave her with the place, or whether it was in payment of the note of Agnes Kerfoot to her. I couldn't say which—part payment of it.

Q. No. 4 is for $500, and is payable to the order of Leary & Crichton. What was that check given for? A. That was a firm in Louisiana, Leary & Crichton. That was given in order to get the money there. They took a draft and gave me the money.

Q. What became of the money? A. I used it sir.

Q. How? A. Why, in various ways. I have stated the expenditures that I made.

Q. Was this a banking firm? A. No, merchants.

Q. It went to your credit with them?

A. They gave me the money. They wanted to send the money off, and they gave me the money there and took the check.

Q. This check was made there in Louisiana then? A. Yes, sir.

296 Q. And given to them? A. Yes, sir.

Q. And they gave you the money? A. Yes, sir.

Q. Check No. 5, for $500, is the same? A. That is the same thing, sir, the same way.

Q. No. 6 was to the order of the same people and for the same amount? A. Yes, sir.

Q. And No. 7 was to the same people for $500? A. Yes sir.

Q. Those checks made altogether $2,000? A. Yes, sir.

Q. Can you give any account of the use you made of that particular money that you got from them in the way you have stated? A. Only in the list of expenditures that I have already given. I used it in that way.

Q. No. 8 is a check to Mrs. Mary M. Rust for $70; what was that for? A. Just as I said about the other. I couldn't tell you which it was for. It may have been one or the other.

Q. No. 9 is a check for $75, payable to Erle H. Turner? A. Yes, sir.

Q. Have you any recolleotion of what that was given for? A. That was while he was in Atlanta, Ga., under treatment there. I stated in my testimony that I paid about $400 for his expenses there, and that was a part of it. That was for medical treatment down there.

Q. Medical treatment at Atlanta, Ga.? A. Yes, sir.

297 Q. The next is No. 10, for $100, T. M. Turner. Where was that check drawn and what was that given for? A. That was drawn by myself and used. I couldn't say exactly in what manner now, individually.

Q. No. 11 is payable to your order for $200? A. Yes.

Q. What was done with that? A. The same answer I make, sir.

Q. No. 12 is a check for $60 in favor of Mary A. Sowers. Who is Mary A. Sowers? A. A niece of mine, sir.

Q. How did you come to give her any of the money of the estate? A. I gave, as I told you the other day, to my relatives, all told about $600, and this is a part of that.

Q. She was a niece? A. Yes, sir.

Q. Was her name mentioned? Were you directed or requested by your brother to give her anything? A. No, sir.

Q. You did that of your accord? A. I did that of my own accord.

Q. She was the same relation to your brother that she was to you? A. Yes, sir.

Q. She was your niece, not your wife's niece? A. No, sir.

Q. Here is a check No. 13 for $65 to E. C. Turner. What was that for? A. That is another niece, sir.

298 Q. Where does she live? A. She lived there in Virginia, and that is included in the estimate I made of $600 that I had given to them.

Q. No. 14 is a check for $15 payable to Thomas L. Settle. A. Yes, sir.

Q. Who was he? A. That was a physician, for the treatment of my brother.

Q. In Warrenton? A. In Fauquier county; not in Warrenton.

Q. Did you get his receipt? Did that pay the physician in full? A. That was his bill.

Q. No. 15 is a check in favor of Samuel G. Webb, $131. What was that for? A. I used that in Louisiana. He was a merchant there.

Q. In Louisiana? A. Yes, sir.

Q. Have you any recollection for the particular occasion for drawing that check for $131.40? A. It was an account I owed him, sir.

Q. Owed him for what? A. Just a mercantile account.

Q. For what; supplies generally? A. Yes, sir, for different things. I couldn't tell you now.

Q. Was it for family supplies and that sort of thing? A. It was that and connected with my farming operations there. It may have been some things of that kind. I couldn't say.

299 Q. Did you get a bill for it? A. I guess so, but I don't know what became of it.

Q. What is No. 16 for, $600 in favor of Leary & Crichton? Have you any recollection of that? A. Yes, sir.

Q. What was that for? A. Just to get the money.

Q. Which you used as you did the other money? A. Yes.

Q. No. 17 is a check payable to J. T. Turner for $161.58. What was that check used for? A. That was one of the notes that I paid for Agnes Kerfoot that I spoke to you about.

Q. Who was Agnes Kerfoot? A. She was a niece of my brother's.

Q. Where did she live? A. She lived in Fauquier.

Q. Who was the note payable to? A. It was payable to J. T. Turner. She owed her brother that much on some land, those notes, and she was not able to pay them.

Q. Who was J. T. Turner? A. Her brother.

Q. And you sent the check to him to pay her note? A. I did, sir.

Q. Did you take the note up? A. Yes, sir.

Q. Have you got it? A. No, sir; I haven't got it. I don't know what became of it.

300 Q. No. 18 is a check in favor of G. A. Turner for $161.58. A. That is another one of those, and he was her own brother.

That is one of the notes. There were two of them, you see, and Mary Rust was the other.

Q. And the proceeds of that were used to take up the note, as you say. What is the name in blue pencil on the corner of this check, "Ferris." Has that any significance that you know of? A. He lived at Ferris, Texas.

Q. The brother, the one to whom that check was made? A. Yes; these two men live there.

Q. What are the initials of those men? A. J. T. was one and G. A. was the other.

Q. No. 19 is a check for $2,000 payable to Erle Turner. What was that for? A. That was for paying the debts out in Texas when I left him there in charge of the business, to have the house built and to see after the farm, to open it up, etc.

Q. How was that money used; do you know definitely? A. It was used in paying for building the house and so on.

Q. Under your direction? A. Under my directions; yes, sir.

Q. Was that for the house or the farm? A. No; this is not for the farm.

Q. For the house? A. For the house and other expenses there.

Q. He rendered you an account for that, I suppose? A. Oh, yes sir; we settled up all that.

301 Q. What did you do with the account? A. Oh, well, we just had a settlement. I had kept an account myself of it pretty well and I found it correct—that he had attended to the business properly.

Q. No. 20 is a check for $500 payable to the order of Joseph Greer. Who was Joseph Greer? A. He was the man I bought the land of.

Q. You mean in the town? A. No, sir; the farm.

Q. The next is check No. 21, in favor of Erle Turner, for $300. A. Yes; that is like the other one. It was given there for——

Q. The expense of erecting the house? A. And for other purposes there. He was opening up the farm, and general expenses there, I think, under my directions, such as buying stock.

Q. Check No. 22 is $80 in favor of E. C. Turner. What was that for? A. That is a niece of mine.

Q. Where was she? A. She was in Virginia.

Q. No. 23 is in favor of Erle Turner for $500. A. That is similar to the others.

Q. What was it for; the house in town or the country? A. It was used there—I couldn't say which. It was for both, you know.

Q. No. 24 is in favor of George Life, for $100. What was that for? A. That was in Louisiana. That was to collect the money, like I did with Crichton, only he wanted a draft to send off—a check, at least.

302 Q. He gave you the money for it? A. He gave me the money for it.

Q. What did you do with it? A. I used it, sir. I couldn't say.

Q. The next check is No. 25, in favor of G. A. Turner, for $40.

What was that for? A. That was while my family were in Texas, when I went out to look for a home. I left them at his place and paid him board.

Q. For all your family? A. For my wife and younger children.

Q. Which one of the children was with him? A. It was Wilmer and Ashby and Lunette.

Q. No. 26 is for $2,000 in favor of Joseph Greer? A. Yes; that is in payment of the farm, $2,000, and $500, which made the $2,500 I paid for the farm.

Q. That was the entire purchase-money? A. That was the purchase-money of the farm.

Q. No. 27 is in favor of Erle Turner for $200. What was that for? A. That was the same that I gave the other drafts, in the payment of expenses there.

Q. Where were you when you made that check? A. I was in Louisiana, I think. Yes, I was in Louisiana.

Q. How do you know? A. I know from the date of it.

Q. No. 28 is in favor of Erle Turner for $175? A. Yes.

Q. The same way? A. The same way, sir.

303 Q. No. 29 is in favor of Eppa Hunton, Jr., for $80.23. What was that for? A. That was for lawyer's fees, in probating the will.

Q. No. 30 is in favor of Erle Turner for $100? A. Yes; the same as those others, sir.

Q. No. 31 is in favor of Erle Turner for $150? A. Yes.

Q. No. 32 is in favor of Leary & Crichton for $900? A. Yes.

Q. What was that for? A. That was simply to collect the money, to get it there.

Q. No. 33 is in favor of Erle Turner for $100? A. Yes, sir.

Q. What was that for? A. That was, as I told you before, Mr. Wilson, for the expenditures out there. I couldn't specify the exact items of course of each one.

Q. No. 34 is in favor of George Life, $100? A. That is the same as I told you before, in regard to that.

Q. He got the money and gave it to you? A. Yes sir, he gave me the money for it.

Q. And you used it in the way you have stated about the other check? A. Yes, sir.

Q. No. 35 is in favor of Leary & Crichton for $350? A. Yes.

Q. What was that for? A. That is the same way, sir.

304 Q. No. 36 is in favor of S. J. Harold, for $95. What was that? A. He was a dentist, sir. It was in payment of bills I owed him as dentist.

Q. For whom? A. For my wife and Erle, I think for those two. I think he had done work for them.

Q. No. 37, Montgomery Ward & Company, Chicago, Illinois, $75? A. That was for some goods I sent there for.

Q. What kind of goods? A. I can't remember, sir.

Q. Can you not give us some idea, whether they were pins and needles or groceries or machinery, or what? A. I could mention some of the items. I got one carpet, I remember.

Q. Did you get dry goods? Do you know the firm? A. Montgomery Ward & Company?

Q. Yes. A. Why, you know, they are a very large firm there. They do business through the mail.

Q. What kind of business? A. They sell everything.

Q. State as nearly as you can what you got of them? A. I don't remember, sir. I remember that I got a carpet and some other things. I don't remember now the articles.

Q. Dry goods? A. Yes, sir; possibly some dry goods. I can't say.

Q. For the family? A. Yes, sir.

305 Q. For the household? A. For the household; yes, sir.

Q. All of it was for the household? A. Yes, sir.

Q. No. 38, T. M. Turner, $600. What was that for? A. That was just collected.

Q. Have you any idea what was done with that? A. I used it, sir. Only in the list of expenses I have given can I tell you.

Q. The next is No. 39 in favor of the State National Bank of Vernon, Texas, $2,000. A. Yes, sir.

Q. What was that for? A. I used that there in my purchases there.

Q. What? A. In various ways, sir. Stock and machinery and so on.

Q. Do you remember receiving that particular amount? A. Which, this one.

Q. Yes; the amount in that check. A. Yes, sir; I made this check myself.

Q. What is the date of that? A. This is April 14th.

Q. What year? A. 1890.

Q. State as nearly as you can what you did with the money that you obtained by means of that check. A. I can't say, sir. It was just put in with other money that I had collected.

Q. Was it all used on the farm or for the household expenses? A. Oh, I can't say whether it was or not. I don't remember

306 because I only used it with other money that I had collected, I can't tell you.

Q. What use had you for money except in connection with the house and farm and the support of your family? A. I was collecting the money from here. I wanted to get it from Washington and get it out there.

Q. Did you invest any of that money, that $2,000? A. No, sir; I don't remember. The only property I have bought I told you. I can't state what I did with this individual money.

Q. You have described all the property you bought, and you have produced checks to show the payment for all the property you bought already, have you not? A. No, sir; I don't think I have.

Q. You have not? A. No, sir; I can't tell. They were not given individually for individual purchases, only in the case of the land.

Q. What you actually did with that $2,000 you do not know? A. I can't tell you.

Q. No. 40 is a check payable to the State National Bank of Vernon, Texas, dated June 4th, 1890, for $1,000. What did you do with that? A. The same answer. I can't tell you what I did with it. I used it.

Q. Have you a recollection of receiving the amount of those two checks, $2,000 and $1,000? A. Yes, sir, I received them.

Q. Did you deposit them in any bank? A. Well, no, sir; I didn't deposit. I kept that myself.

307 Q. Did you not keep any bank account? A. Oh, not with this money, except with this bank here.

Q. You did not keep any bank account in Vernon? A. Not of this money, no, sir.

Q. What account did you keep? A. Afterward in making my crops there and one thing and another, I would sometimes keep an account for a short time with the bank there. I didn't have much confidence in the banks there.

Q. The proceeds of these checks, then, you did not deposit in any bank? A. No, sir.

Q. You kept the money in your own possession? A. I kept the money in my own possession.

Q. And paid it out as you thought proper? A. Yes, sir.

Q. No. 41 is in favor of R. S. Rust for $75. What was that for? A. Now, that is the husband of Mary Rust that I spoke to you about. I can't remember, Mr. Wilson, whether I gave that to them as a present or not. I can't say right now.

Q. You do not remember? A. I do not, sir.

Q. No. 42 is in favor of T. M. Turner, $500. A. That was only for collection, sir, to get the money in my possession.

Q. What you did with it you do not know? A. I can't say what I did with that individual money right now.

308 Q. No. 44 is in favor of R. S. Rust, $50. A. Now I can explain the Rust matter. I bought a horse of him, I remember now, and I presume those two drafts went for the payment of it.

Q. No. 45 is in favor of Joseph H. Chilcott, $350? A. Joseph H. Chilcott?

Q. Yes. A. That is a part of the Mary Rust place. That was bought from a man named Chilcott.

Q. No. 46 is in favor of Kirby & Leach, $50? A. That was in the same transaction. They had the sale of the place.

Q. No. 47 is in favor of E. H. Turner, $500? A. Well, that was just the same that I told you before. It was paid to him to disburse for me there.

Q. E. H. Turner. That is Erle Turner, I suppose? A. Yes, sir.

Q. That was in September, 1890? A. Yes, sir.

Q. No. 48 is dated September 25th, to the order of E. C. Turner for $50. A. That is my niece, like the other—I gave you.

Q. No. 49 is in favor of Adams & Orison for $50. Who were Adams & Orison? A. That is a firm in Front Royal, sir.

Q. Front Royal, Virginia? A. Yes, sir.

Q. What was it given for? A. It was just given for the money. They wanted a draft and I gave it to them and they gave me the money, like the other transactions I spoke of.

309 Q. To whom did the money go; the proceeds of the check? A. I got the money.

Q. What did you do with it? A. I used it, sir; I can't tell you what I did with it.

Q. At Front Royal? A. Yes, sir.

Q. No. 50 is in favor of Adams & Orison, $50? A. Yes; the same way, sir.

Q. No. 53 is in favor of W. K. Adams, $50. A. The same thing, sir.

Q. The same person? A. No, sir; that is a brother of this Adams. He was a merchant.

Q. What was that given for? A. The same way, to get the money, sir.

Q. That was in 1890, was it? A. 1890.

Q. In December? A. Yes, sir.

Q. Where were you then? A. I was in Virginia, then, sir.

Q. Where? A. I was at that time—where the cave is—Luray.

Q. What were you doing there? A. I was there on a visit.

Q. Whom were you visiting? A. I was visiting my niece up there.

Q. Who was with you? A. Why, my wife was there, and my children, a while.

310 Q. Your three children, the three younger ones? A. No; the two younger ones. Wilmer had been sent off to school, to Hollins.

Q. How long were you there visiting? A. Why I don't remember, sir; perhaps a week or two.

Q. Only a short time? A. I can't remember; not long. I can't remember the time.

Q. The next is 54, J. E. Sowers, $100? A. Yes.

Q. What was that? A. That was a present to him, sir.

Q. A present? A. Yes, sir; he is the husband of Mary Sowers, my niece. And also my family had been boarding with him part of the time, and I wanted to remunerate him to some degree.

Q. How long had your family been boarding with him? A. I couldn't remember, sir.

Q. About how long? A. They stayed with him down in Clark for a while, and then he went over to Luray, and my family went up there and stayed a while. I don't remember the time exactly.

Q. Did you pay any other bills in Virginia? A. Afterwards I did, after I left Virginia and went back to Texas, and I don't know that this is all the board bill. I don't remember.

Q. Have you any idea how much you paid for board bills? A. No, sir; I do not.

Q. In Virginia? A. No, sir; I can't tell you. I stated in my

list of expenditures the other day that I paid from the time I
311 left there until my family went back to Texas in January,
1894—that I paid out about $1500.

Q. No. 55 is a check to Adams & Orison for $50. A. Yes, sir. It is the same thing that I answered about the other.

Q. And 56 is to Adams & Orison for $40? A. Yes, sir.

Q. 57, H. V. Hudson, $14.75? A. Yes, sir.

Q. What was that for? A. That was for some bill of goods of some kind there.

Q. Where? A. At Luray, that I got for my family or my wife. Of course I don't know what it was.

Q. 581 J. E. Sowers, $22.05? A. Yes, sir; that was on that board question.

Q. The same thing? A. Yes, sir.

Q. 59, E. H. Turner, $100? A. Yes, sir.

Q. The same thing? A. Who is that?

Q. E. H. Turner. A. No sir; that was given in payment of matters there in Texas, like the others that I sent to him.

Q. That you sent to him to pay bills with? A. Yes, sir.

Q. 60 is to H. K. Adams & Company, $30. Who were
312 H. K. Adams & Company? A. He was a merchant there at
the same place.

Q. At Luray? A. At Luray; yes sir. It is W. K. Adams.

Q. 61 is for W. K. Adams & Company, $30? A. Yes, sir.

Q. The same thing? A. Yes, sir.

Q. 62 is V. H. Ford? A. Well, that was another. I can't remember whether that was a merchant or a dentist. I can't remember, sir, about that. That was for some expense that I incurred there for my wife or family. I had some work done for my wife there. A set of teeth that had been made in Louisiana did not prove satisfactory, and I had to have some work done there, and I don't remember what he was.

Q. Whether that was it or not, you do not know? A. I don't remember, sir.

Q. 63, William M. Fielding, $100. What was that? A. Why, that was simply to collect the money, sir.

Q. They collected the money and gave it to you. Is that right? A. Yes, sir; that is it.

Q. No. 64 is V. H. Ford, $100. A. That is the same thing, sir; the same way.

Q. The same way as what? A. This (indicating) I think was a bill, but this $100 was given to just collect money.

Q. While you were there? A. Yes, sir.

Q. How did you spend the money? A. I used it like I
313 did the other, sir. I couldn't tell you now, only in my list
of general expenses I have made it up as near as I can. I
can't remember how I spent individual amounts.

Q. Here is a charge check for $75, dated July 9th. Have you any recollection of that? A. I don't remember, sir. I can't say.

Q. The checks that were given by you after February 21st, 1891, are still in the bank. You never have obtained those, have you? A. No, sir.

Q. They are still in the bank? A. I guess so. I don't know. I have never received them.

Q. What nephews and nieces survived your brother? A. Do you wish the names of all of them?

Q. All of them, and where they live. A. There was J. T. Turner and George A. Turner.

Q. Who were they? A. They were nephews.

Q. Sons of whom? A. Sons of James T. Turner, my brother.

Q. Are those the only children of J. T. Turner that are living? A. No, sir; I was going to give you the rest.

Q. Give us all of them. A. Then of the same family there was Mary Rust, Agnes Kerfoot, Nannie Turner and Lou Turner. Those were the children of James T. Turner.

Q. When did he die? A. I can't tell you, sir, the date of his death.

314 Q. Long before your brother died? A. Some time before, a few years.

Q. Where did your brother, J. T. die? A. He died in Texas, on a visit to his son.

Q. Where did J. T. Turner live? A. He lives in Texas.

Q. He lived there at the time? A. Yes, sir.

Q. Where did G. A. Turner live? A. He lived in Texas.

Q. And Mary Rust? A. She lived in Fauquier county, Virginia.

Q. She had been married? A. Yes.

Q. How long had she been married? A. A good many years. She had grown children.

Q. She had been married a good many years before your brother died? A. Yes, sir.

Q. Agnes Kerfoot; where did she live? A. She lived there in Fauquier.

Q. She had been married? A. Some years.

Q. And had children? A. Yes, sir.

Q. Nannie Turner? A. She lived in Maryland.

Q. Whereabouts? A. I was just trying to think of the name of the place, Mr. Wilson.

Mr. JOHNSON: Was it Frederick?

315 A. Frederick.

By Mr. WILSON:

Q. Frederick, Maryland? A. Yes, sir; Frederick City, Maryland.

Q. And Lou Turner? A. She lived there.

Q. They both lived in Frederick? A. Yes, sir.

Q. Do they live there now? A. I think they do, sir.

Q. Any other nephews or nieces? A. Yes, sir; the children of William F. Turner.

Q. Who were they? A. Mary Sowers and E. C. Turner. That was all.

Mr. Johnson: What was E. C. Turner's name?

A. Eva.

By Mr. Wilson:

Q. Any others? A. That was all of his children.

Q. Any other brothers?

Mr. Johnson: Are you inquiring of brothers of Silas?

Mr. Wilson: I am asking in regard to brothers who died of the witness. I want to get all his brothers and sisters.

Q. James T. was one, William F. was another and now I want to know if there was any other brother? A. Oh, yes, sir, but not married. I had another brother that was never married.

Q. What was his name? A. His name was Hezekiah.

316 Q. Is he living? A. No, sir; he died about the close of the war, I think.

Q. He was dead at the time your brother died? A. Yes sir, he was dead.

Q. Any others? A. No other brother. I had a sister.

Q. What was her name? A. Henrietta.

Q. Henrietta Turner? A. Yes, sir.

Q. Where did she live? A. She lived with her relatives, sir, part of the time at one place and part of the time at another.

Q. Where? A. She lived part of the time in Maryland with her nieces, and part of the time in Virginia with her nieces.

Q. She was your own sister, I understand? A. Yes, sir.

Q. Is she still living? A. Yes, sir; she is living. We had a half brother and sister that were older. My father was married twice. Do you wish to know of them.

Q. You might give them. A. The oldest was John A. Turner. He died years ago in Zanesville, Ohio. He was a physician, and died before the war.

Q. Did you have a half sister? A. Yes, sir, a half sister, Elizabeth. She was a Mistress Ogilvie.

Q. She is dead. A. She is dead long ago.

317 Q. What, if any, directions or requests did your brother make to you before his death in respect of any of the persons whom you have named?

Mr. Johnson: I renew the objection here that I made before to that subject.

A. He only made these requests that I have stated, about buying the home for Mary Rust and paying those notes.

Q. Mary Rust and Agnes Kerfoot? A. Yes. sir.

Q. He did not make any request in regard to his sister Henrietta? A. No, sir; he felt that I would take care of her anyhow, I guess, or try to.

Mr. Johnson: That is objected to.

By Mr. WILSON:

Q. Did you? A. I did to a certain degree, sir.

Q. To what extent? A. Oh, well, I gave her money as long as I had it, in different sums.

Q. How much did you give her altogether, do you suppose? A. I stated in my list of expenses, Mr. Wilson, about $200, but I am satisfied now it was more. I can't remember. I never kept any account of it, sir, but I am satisfied I gave her something more than that.

Q. And the daughters of William F., Mary Sowers and Eva, did you give anything to them? A. I gave them some, yes, sir.

318 Q. Have you any idea how much? A. No sir; I couldn't tell you, only as I said before in my statement, I think all the amounts I gave to them would amount to perhaps $600, as near as I could arrive at it. I kept no account of it.

Q. Did you give any to J. T. Turner and G. A. Turner? A. I gave them nothing, sir. I paid J. T. Turner for board while my family was on him. I paid him something for that, but I gave him nothing, nor did I the other young man.

Q. G. A.? A. Yes, sir; I thought they were able to take care of themselves?

Q. Nannie Turner and Lou Turner. Did you give them anything? A. I may have given them a little present or something of the kind. They didn't need it particularly. They were doing very well.

Q. Did your sister or your nieces know from what source the money you gave them came? A. I don't know, sir.

Q. You never told them? A. I didn't tell them; no, sir.

Q. You did not tell Mrs. Rust or Agnes Kerfoot? A. No, sir.

Q. That it was your brother's money? A. No.

Q. Did you give them to understand that it was your own? A. No, sir; I don't think I did. I said nothing about it.

Q. When was it that your brother talked to you about Mary Rust and Agnes Kerfoot? A. Just before his death a short time.

319 Q. Do you mean a few days before his death? A. Oh perhaps a week maybe. I couldn't say. Some time before his death. I got to where he was, I think, about the 11th of August and he died about the 21st of September, I think was the day, and during that time that I was with him was when he talked to me.

Q. What was the matter with him? A. The doctor said he had Bright's disease. I suppose he had.

Q. I understood you to say that he left absolutely nothing in the way of real estate, no farm, no property, or interest in any? A. No; no property of that kind, sir. Before his death he gave me a watch that he had, a small watch, to give to my oldest daughter. I think she has it now. That was a special present to her.

Q. Do you know of his having bought any real estate or property before he died? A. I do not, sir. I know nothing of anything of that kind.

Q. Do you not know of his having, a short time before his death, had in his possession any property of any kind except these notes? A. That is all I know of. I know of nothing else.

Q. He died at Mrs. Rust's house, I understood you to say? A. Yes, sir.

Q. Was there any claim for board? A. Oh, well, I gave her some money afterwards, you know, and gave her some money while my brother was sick that I had of my own. She was in limited circumstances, and her husband was doing nothing much.

320 Q. In the form of ready money your brother had nothing whatever? A. No sir; I don't suppose he had there. I didn't see it.

Q. You did not find anything? A. No, sir.

Q. You did not see anything, to the extent of a dollar? A. I don't remember anything of the kind. I think, Mr. Wilson, that maybe he did have—I don't remember positively but it occurs to me now that he might have had a small amount of money when he died and I gave it to my niece, Mary Rust. Now, if it was, it was but a small amount, perhaps $15 or $20, something of that kind. I don't remember that it is so.

Q. Is Mary Rust living still? A. I think she is; yes, sir.

Q. At the same place? A. No, sir; I think she is living at Front Royal now.

Q. How long had your brother been living with her? A. I think he had only been living there a month or such a matter when I got there—a short time.

Q. Where did he live before that? A. Why, he lived at different places, sir. I don't know. I wasn't in Virginia, and it is only hearsay. I could not tell you where he lived.

321 Q. Do you know whether Mary Rust knew anything about his property and his possessions? A. I do not.

Q. At the time of his death or before his death? A. I can't say, sir.

Q. Did you ever have any conversation with her about his property, either before his death or after his death? A. No, sir.

Q. You never told her about the will? A. No, sir.

Q. And never communicated to her what this property consisted of? A. No, sir.

Q. She did not know? A. No, sir.

Q. Did you ever communicate to any of his nephews or nieces or to your own sister what this estate consisted of? A. No, sir; I did not.

Q. Was he more intimate with his niece Mary Rust than with any of his other nieces or nephews? A. I don't think he was, sir. I don't know.

Q. Did he live at any time with any of his other nieces or nephews? A. I couldn't tell you, sir. I had been absent for so long, I don't know. He was rather peculiar. He would fall out with his relatives frequently and would not visit them maybe for a great while—so I heard, now. I can't tell you. I wasn't there and I don't know, but I know he was of a very peculiar nature.

Q. How did you happen to come to visit him from Louisiana? A. Why, one of them wrote me by his request. He wanted
322 me to come.

Q. That letter you received from Louisiana, and then came on here? A. And then came on here; yes, sir—either a letter or a telegram. A letter, I think. I am not positive about that; and I came on.

Q. Do you know what his relations were with his sister? A. No, sir; I can't say that I know. He seemed to be a little embittered with her some way or other, but I didn't press the question, Mr. Wilson.

Q. He talked to you about her? A. Yes, sir; a little.

Q. And the only direction he gave was that Mary Rust was to have not to exceed $2,000. A. Not to exceed $1500—a home not to cost over that, and to fix it in such a way that her husband could not get it. He had no confidence in her husband.

Q. Did I understand you to say that he made any mention of the other niece? A. Yes, sir; he told me to pay those notes.

Q. Did you understand to whom your brother's property would have gone if the will had been set aside or if he left no will? A. I don't know, sir. I suppose it would have gone to his heirs.

Q. Was that a matter of consideration at all between you and him? A. He didn't want them to have it, he told me before his death. He said they should not have it, only what he had stated, and if there was any effort made to defeat the will, to spend
323 any amount of money to defeat it. He made me promise him that.

Q. When was that? A. Before his death a short time.

Q. He was determined that none of his nephews or nieces or his sister or yourself should have any of the money except as he directed and provided by the will? A. Well, I don't know—he didn't say myself. He didn't want any of the others to have it.

Q. What did he say about yourself? A. He said he had left the money to my children, and of course he didn't say that he didn't want me to have it. He said he didn't want them to have it.

Q. Did he give you any suggestions about managing the money? A. No, sir; he didn't give me any suggestions about it.

Q. Did he say that he feared an effort would be made to break the will? A. He spoke about that. He said it might be.

Q. Tell us all he said as nearly as you can recollect what he said about that. A. I have told you he suggested to me that such an effort might be made, but if it was I must use every means in the world to defeat it, that he did not want them to have it, that he would rather give it to some stranger than for them to have it.

Q. Did he mention any particular persons that he was inimical to? A. Oh, only all of them, you know.

324 Q. That was just shortly before his death? A. Yes, sir.

Q. And you came down here then. Did you tell Mr. Tracy what he had said? A. Yes, sir; in our conversation I guess I did. I don't remember positively. I think I did.

Q. The first time you saw him? A. Oh, no sir; I didn't say anything then.

Q. You did not tell him then? A. No, sir.

Q. When did you tell him? A. I don't know that I told him at all. I say that I possibly may have spoken to him about it, and in talking to me about the very same thing, when we were making that settlement, he suggested that there likely would be an effort made to break the will, to set it aside, and so on, and I may have spoken to him then. I can't say sir, positively.

Q. When you came down and saw him at the Post-Office Department, I understood you to say that you showed him the paper that is marked "Exhibit Erle H. Turner No. 22." A. Yes, sir. This is the paper.

Q. That is the paper? A. Yes, sir.

Q. When you showed it to him, the words in pencil there were not on it at the bottom of the second page, were they? A. No, sir; they were not on it then.

Q. Those words "This list was given by Mr. Tracy as a list of the property of S. H. Turner in his hands" were written by your son? A. I don't know, sir. I think it is my son's handwriting, but I can't say.

325 Q. At any rate they were not on it? A. They were not on there when I showed the list to Mr. Tracy.

Q. Were they on there when you sent the list up here? A. No, sir.

Q. They were put on there after you sent the list from Texas last year? A. Yes, sir.

Q. The notes that are described in this exhibit you did not see at the time of your first interview with Mr. Tracy. He did not have them there, did he? A. No sir; I didn't see the notes at that first interview.

Q. And you say that he said to you then that he had these notes in his possession? A. Yes, sir; that he had them in his possession.

Q. You are sure of that? A. I am sure of it. Well, he said he had the notes. I asked him the question.

Q. Whether or not any of those notes had been paid at that time you do not know, do you? A. I don't know, sir. He said he had the notes in his possession and that they were all right. I remember the expression that he made, that they were as good as gold. He made that remark. I remember that.

Q. Did you have the list in your hand during your conversation with him? A. Yes, sir.

Q. And did he take it and look at it? A. Yes, sir.

326 Q. And identify the notes, go over them carefully, one by one? A. No sir, he just took the list and looked over it and said "That is all right; I have those notes all right. They are perfectly good, as good as gold."

Q. Then he handed it back to you? A. Then he gave it back to me and we talked about his death.

Q. When was it you first talked about the danger of the contest of the will? A. That was when we had the settlement.

Q. It was not the first day at all? A. Oh, no, sir.

Q. And it was not talked of in the presence of Mr. Hunton? A. No, sir; there was nothing more done that day. After that he gave me some money and told me he had to go off, that he had a leave of absence and would be gone a while and when he returned he would inform me and we would have a general settlement of it.

Q. Then in the presence of Mr. Hunton there was nothing said about the contest at all? A. Oh, no, sir; nothing at all.

Q. Was there afterwards anything said by you to Mr. Hunton about the danger of a contest? A. No, sir.

Q. Did Mr. Hunton know what you had decided to do to avoid a contest or to prevent a contest? A. No sir; I don't know. I don't suppose he knew, because I didn't tell him.

Q. You did not tell him? A. No, sir.

327 Q. Did you tell him about the settlement that you had made? Did you make any communication to him about the settlement you had made?

Mr. Johnson: I object on the ground that it is calling upon the witness to disclose communications between him and his counsel, Mr. Hunton.

A. Now let me understand your question.

Q. I asked you if you had told Mr. Hunton how you had settled with Mr. Tracy? A. I never saw Mr. Hunton afterwards.

Q. After that interview at the Post-Office Department? A. No, sir.

Q. The will was probated after that? A. I suppose so, sir.

Q. You had nothing to do with that personally? A. I don't know sir. Mr. Hunton sent me his bill in Louisiana and I sent him a draft or check for the money. We call them drafts out in our country.

Q. The only conference you had with him then was in the interview with Mr. Tracy at the Post-Office Department, before you received the money? A. Yes, sir.

Q. Do you remember how these notes were drawn generally and endorsed? A. I can't tell you, sir.

Q. Or who was the payee? A. No, sir; I don't remember. I can't tell you.

Q. Did the name of your brother appear on them in any way? A. I don't know, Mr. Wilson whether it did or not.

328 Q. Did the name of Tracy appear? A. I can't say, sir.

Q. When did your wife first know the terms of the will of your brother? A. I don't know, sir.

Q. When did you first communicate to her the fact that you had obtained the property or the estate of your brother. A. I never communicated it to her, sir.

Q. And she never knew it? A. I don't know whether she knew it or not, but I never told her.

Q. Do you know that she did know at any time? A. I can't tell you, sir. I don't know that she did.

Q. Did you intentionally conceal the fact from your wife that you had received the estate of your brother? A. I guess I did, sir, intentionally.

Q. And never up to the present time have you ever told her that you did receive your brother's estate? A. Oh, I don't remember whether I had or not. I couldn't say positively, sir.

Q. Have you any knowledge yourself as to the time, or any time before the bringing of this suit, when she knew that you had and had received your brother's estate? A. No, sir.

Q. You cannot say? A. I can't say.

329 Q. You produced here and there is in evidence, an exhibit T. M. T. No. 1, which is a deed executed by you to Wilmer Turner and Ashby Turner and Lunette Turner. When that deed was executed did your wife know what you had received, or that you had received anything in respect of your brother's estate? A. I can't say, sir, whether she did or not.

Q. You mean you cannot say because you do not know? A. I don't know. I imagine that she thought so.

Q. Is she not a party to that deed? A. Yes, sir; a wife has to be a party to a deed in Texas, to make it effective.

Q. Does not that deed recite that it is in consideration of "six thousand and four hundred dollars to me in hand paid by Philip A. Tracy, executor of the last will and testament of my deceased brother, S. H. Turner, in trust for the use and benefit of my children, viz: Wilmer Turner, Ashby Turner and Lunette Turner, minors, which said trust fund, together with other similar trust funds was turned over to me without bonds and has been used by me for my own use and benefit, said consideration being in payment of so much of said trust fund," etc. When that deed was made by you, did or did not your wife know of the facts stated in it? A. I can't tell you, sir.

Q. Why did you make that deed in favor of Wilmer, Ashby and Lunette Turner and exclude your son Erle? A. Because he was older and I thought he was more able to take care of himself, and they were younger. I was trying to save the remnant of the matter for them. I had them to educate and support until they got older—at least a portion of them, and I thought that would be best.

330 Q. Had there been between you and Erle and your wife no discussion or conversation in regard to the disposition of that fund prior to that time? A. No, sir; not that I remember.

Q. And up to that time you had not told Erle Turner that you had gotten the money of the estate? A. I had not.

Q. Or any one of your children? A. No, sir; I had not told any of them.

Q. And whether when you- wife signed this deed she knew it, you do not know? A. I can't say.

Q. Until your daughter or somebody from her wrote to you, you had never made any explanation of the situation? A. That was the first explanation I made of it.

Q. Did you intend to deprive them all of the money you then had in your hands? A. That I had in my hands when?

Q. At the time you made that explanation? A. I had no money then in hand at the time I made that explanation.

Q. Did you not have the proceeds of this farm, this sale? A. I hadn't sold it then, sir.

Q. You had the property, then, in your possession? A. Yes, sir.

Q. And you intended to keep that for yourself? A. Well, I intended to use it, to keep it, to live on, and if I succeeded in making anything, I expected to give it to them when I died.

Q. Your family? A. Yes, sir.

331 Q. You intended to provide for them. You intended to support them and provide for them and if you could, pay this money back? A. Yes, sir; eventually, if I could.

Q. You made a deed on the 4th of September, 1894 in which you conveyed a lot of personal property to Wilmer Turner, Ashby Turner and Lunette Turner, in which you said, "The intention of this conveyance being the payment to my said minor children the amount of the above-named consideration for money belonging to them and used by me for my own use and benefit," the above-named consideration being $3,000. Was that additional to the $6,000? A. Yes, sir.

Q. Intended to be? A. Yes, sir.

Q. Did anybody know you had made such a deed as that? A. I put it on record there.

Q. Did your wife know it? A. I don't know that she did. She knew I made the other. I don't know whether she knew I made that or not. I can't say.

Q. Did any of the children know it? A. No, sir.

Q. Did Erle know it? A. No, sir.

Q. You are sure? A. I don't know that he did. I didn't tell him. I can't tell you. I put it on record. I don't know whether he knew it or not.

332 Q. You made this conveyance and put it on record on the same day it was made. What was your object in doing that? A. In putting it on record?

Q. Yes. A. Why, to perfect the transaction.

Q. What did you desire to accomplish by the deed? A. To convey the property to them.

Q. Why? A. I wanted to give it to them.

Q. Because it was theirs? A. Yes, sir, as a part——

Q. Of what was coming to them? A. Yes, sir; what I considered was coming to them from me.

Q. Why had you not done it before? A. Because at that time the panic had come on there and I was in debt, and I feared some other parties maybe would press me and that they might sell the property; and the way property was selling then, it was at such a sacrifice it would bring nothing, and I was trying to save it.

Q. Did they get what you intended to give them by that conveyance? A. No, sir; I guess they didn't.

Q. Why not? A. Because the farm was finally forfeited to the State and the stock was used—got old and died off. The machinery was used up.

Q. Did you sell the stock that you conveyed in this paper? Did you sell it yourself or what did become of it? A. No sir; the stock was gradually used up and died from old age.

333 Q. Here were enumerated eighteen head of horses. What became of those? A. As I told you they were consumed in their use, and some of them died.

Q. And the mules, what became of those; the same thing? A. The same way, sir. I had right bad luck about mules. There was quite a lot of them died.

Q. The machinery did not die, I suppose? A. That wore out, sir. That country wears out machinery very rapidly.

Q. So that they absolutely got nothing? A. No, sir; they got nothing.

Q. Not a dollar? A. No, sir.

Q. That was in 1894? A. Yes, sir.

Q. How long did you keep on working the farm after that? A. I kept on until this spring.

Q. When was it sold? When did it revert to the State? A. When did it what?

Q. When did the land revert to the State? A. In 1896.

Q. Two years after this? A. Yes, sir. I think it was in 1896 or 1897. I can't say positively about that. The record will show that.

Q. Then after that, when the land reverted to the State, you had this property in your possession? A. A portion of it; some of it.

334 Q. And you continued to use it until it was all gone? A. Yes, sir.

Q. And they did not get any of it? A. No, sir; they didn't get it.

Q. When you executed these papers I have just been questioning you about, Exhibits T. M. T. No. 21 and 22, did you make any other conveyance or assignment of your property to anybody else? A. I did not.

Q. And you made an assignment then by these two papers of all the property you then owned. Is that so? A. No, I owned the house and lot in the town at that time, I think.

Q. You made no conveyance, of that? A. No, sir, because I think that then had a deed of trust on it. I am not positive about that. I know I placed a deed of trust on it. I can't remember the date exactly.

Q. But you did not convey it at that time? A. No, sir.

Q. Did Erle Turner ever make any representation or statement to you that the others were getting more than their share, or any share of the estate to which he was entitled? A. No sir; he never did.

Q. He never at any time made any complaint to you about the estate? A. No, sir.

Q. Or about his share in the estate? A. No, sir.

335 Q. He never claimed of you any money whatever in respect of the estate? A. No, sir.

Q. And never objected to any payment being made to you of any of the money of the estate? A. No, sir; he never had anything to say to me.

Q. When, so far as you know, did he first know of this assignment? A. I don't know, sir; I can't tell you.

Q. At the time that you made that assignment were you in debt to Erle Turner in the sum of $1,300? A. I was not.

Q. There is in evidence an exhibit, "E. H. T. Cross-examination No. 11," which we claim to be in the handwriting of E. H. Turner. Will you examine it, and say if you recognize the signature of E. H. Turner, and if that is his handwriting (handing exhibit above referred to to witness)? A. Well, sir, it looks like his handwriting.

Q. Is that his signature? A. The signature don't seem to be his. I couldn't say, sir; it don't look as much like his as some I have seen.

Q. But he admitted it to be his. A. Well, I say, I don't know. If you will notice, it is a little different from the other writing.

Q. You have not any doubt about it, have you? A. I have no doubt about it, sir. It looks like his writing. I never saw it before.

336 Q. You never saw the letter before? A. No, sir; I don't know anything about it.

Q. The letter that I have just shown you contains the following passage: "About the property—I wish you would just let it rest as it is for the present. Now about letting the others have it: I think they have all had more than I have, and are getting the use of it now. When papa made an assignment, he put all the property in Wilmer, Lunette and Ashby's name; did not mention me—not even the $1300 that I had loaned him." Did you owe him $1300 at the time that assignment was made? A. No, sir.

Q. You did not owe him a cent? A. No, sir. I know nothing of it.

Q. Did you ever give him an order for $1300, as being for money that you owed him? A. No, sir.

Q. Did you ever give him an order for any money on Mr. Tracy? A. No, sir. I think I gave him an order on Tracy for the proceeds of that land.

Q. When was that? A. I can't remember the time to save my life.

Q. What was that for? A. Mr. Tracy had refused to turn it over to me, and I thought possibly he would turn it over to Erle.

Q. You did not give Erle the order because you owed him the money did you? A. Oh, if he had collected it I intended to let it go as part of his interest in the estate.

337 Q. But you did not owe him the money? A. Outside of that I did not, sir.

Q. The expression in the letter is, "the $1300 that I loaned him." A. He never loaned me any money, only the little money that I had in my hands belonging to him when he was a boy. In a settlement with him I paid him for that.

Q. He says, furthermore: "I think it is no more than right that I should have this, as they have all the rest, and are having the benefit of it." If he used such an expression as that, what did he mean by it?

Mr. JOHNSON: I object to the witness being called upon to state what Erle Turner meant by words used in a letter which the witness says he has for the first time seen today; and especially in view of the fact that by the request of counsel for the defendant the witness was not present when Mr. Erle Turner gave his testimony, and had not the opportunity of knowing what any of that was about. And I object, on behalf of the complainants, to having the interpretation of the witness of that letter or anything in it offered in evidence against them.

By Mr. WILSON:

Q. Now you may answer. (The preceding question was read to the witness by the examiner.) A. I don't know, sir.

Q. Were the three children who were named in the deed to which reference has been made having the benefit of the property
338 that you got from your brother in any way? A. Well, only in regard to their living expenses, paying their school bills, etc.

Q. When did Erle Turner finally leave home, did you say? A. You mean when he first went off? It was in 1890 that he first went to Philadelphia.

Q. He has been on his own resources ever since, has he? A. Yes, sir.

Q. What benefit have the three children named in the deeds to which reference has been made received from the money that you obtained from Mr. Tracy? A. Only so far as they have been educated and their living expenses paid.

Q. They have been fed, clothed and educated with that money, have they not? A. Yes, sir—that money and the proceeds of it, and the money that I made myself from the property; that is, up to a certain time, of course, until that was gone.

Q. Until it was gone? A. Yes, sir.

Q. And when was that? A. The money was gone by about the latter part of 1893. The farm was not forfeited until, I think, 1896; but during the years 1894, 1895 and 1896 it was from the proceeds of the farm that I had to support them.

339 Q. Were they all well educated? A. Well, no, sir; I can't say that they were.

Q. You cannot say that they were? A. No, sir.

Q. Were they properly clothed? A. Yes, sir.

Q. And provided with all the comforts of life? A. Yes, sir.

Q. What schools did they go to? You stated the other day that they attended private schools, I think? A. The younger ones; yes. Wilmer was sent one year to Hollins institute in Virginia; and after that she was for several years at Kleinberg, and finished her education there. The others were schooled in the schools of Virginia here for about three years, and then after they went back to Texas I sent them to the schools there. Since that time I have sent the younger boy, Ashby, one year to Georgetown college; and my youngest daughter is there now. She has been there a year.

Q. Georgetown, Mississippi, or Georgetown, Texas? A. Georgetown, Texas—the Southwestern university.

Q. When did you wholly cease to contribute to Miss Wilmer's support? A. When she finished her education. She went then to teaching, I think.

Q. When was that? A. That was about 1894 or '5.

Q. And since that time you have contributed nothing to her support? A. No, sir.

340 Q. Neither her clothing or her board or anything in any way? A. No, sir; she has supported herself.

Q. Absolutely and entirely? A. Yes, sir.

Q. You said that you made application to Mr. Tracy for the proceeds of the Maryland Avenue lots? A. Yes, sir.

Q. When did you make the first application to him; and was it in writing or orally? A. Oh, it was in conversation. I can't tell you the date. I tried to fix it, but I cannot.

Q. Did you ever make any written request of him? A. No, sir; only I may have given Earle an order on him for that amount. I can't say now that I did; but I gave Erle the certificate that he gave me stating that he had invested the money in that property, and I think likely I gave him an order on Mr. Tracy for it, thinking that Mr. Tracy maybe would pay it to him, as he would not pay it to me.

Q. That is the certificate that has been produced here in evidence, is it not? A. Yes, sir.

Q. You have seen it, have you? A. Yes sir. The copy has been produced here; I don't know what became of the original.

Q. The copy that you retained? A. Yes, sir.

Q. What was that? Do you remember what that purported to show? A. Why, I suppose the paper will show better than

341 I can tell you.

Q. Well, what do you recollect about it? What is your recollection about it? A. Well, it was simply that he had invested so much money—I believe he had invested $3,600—half of it my brother's money, and half his own, in some lots (I don't remember the verbiage) at such a price. I don't remember the exact price of the lots. It strikes me it was 35 cents a foot; but I don't remember positively.

Q. That was a certificate that he had invested money belonging to your brother? A. Yes, sir.

Q. It was not a receipt or certificate to you, was it? A. Only that it was an asset of my brother's property, you know.

Q. Where did you get that? A. Where did I get which?

Q. That certificate? Did Mr. Tracy get it, or was it among your brother's papers? A. Mr. Tracy gave it to me.

Q. When? A. After our settlement.

Q. At the time of the settlement? A. Yes, sir.

Q. At the time of the settlement? A. That was put on the list as some of the assets, and he then wrote this certificate and turned over to me the notes, etc.; and that was part of the settlement.

342 Q. That was a part of the settlement, and one of the things enumerated in that schedule—that interest? A. Yes, sir.

Q. Now, do you know whether or not you did make any written application to him for an account of that money, and if so, when? A. I don't remember whether I did or not, sir.

Q. Do you know of any objection having been made by your wife or Erle Turner to the payment to you of the proceeds of that sale? A. I do not, sir.

Q. Or of that ground? A. I don't know of it.

Q. You never heard of any objection having been made by either of them? A. I don't know; I don't know anything about it.

Q. I say, you never heard of any objection being made by either of them to the payment to you—— A. No, sir; I have not heard of it.

Q. Do you know of Mrs. Turner being in correspondence with Mr. Tracy? A. Only since I saw these letters here; I did not know of it.

Q. You did not know it at the time? A. No, sir.

Q. Did you at any time receive from Mr. Tracy any notification that he had been advised not to turn over another dollar of the estate money to you until you had qualified for the full amount of the estate? A. Only when he refused to turn over that money for the Maryland Avenue lots.

343 Q. Well, what did he say? A. He said then that he had concluded not to turn it over to me.

Q. Why? A. He said he had consulted a lawyer, and that he would not turn any more over until I should qualify as administrator, and give bond for the whole estate.

Q. What did you say? A. I told him I would not do it then.

Q. Why? Did you give any reason? A. Because I didn't want to go to the trouble; and I didn't know that I could get the bond, even.

Q. And did you repeat your request for the money after that? A. No, sir; I did not.

Q. Did you accept that as a satisfactory reply to your request? A. No, sir; I did not.

Q. What did you do, and what did you say to him? A. I told him——

Q. Did you write to him or see him? A. It was in conversation.

Q. Where? A. Here in Washington.

Q. When? A. Oh, I cannot give you that date, sir.

Q. Give me the year, then. A. I don't know that I can do that. It was the last time that I was here with him. I think it was in 1891 that I was here last. I am not positive, but I think so.

344 Q. Had he sold the lots then? A. Yes sir; he said they had been sold.

Q. He told you they had been sold in 1891? A. Yes. I didn't say he said they had been sold in 1891; he told me they had been sold.

Q. He told you, in 1891, that they had been sold? A. I think it was 1891.

Q. And you requested him to pay over the money? A. Yes.

Q. And he declined? A. Yes.

Q. Upon the ground that you have stated? A. Yes, sir.

Q. Upon the ground that you must give bond, and you declined to give the bond? A. Yes.

Q. And that was, to the best of your recollection, in 1891? A. I think it was.

Q. Was that the last time you saw him? A. Yes, sir.

Q. What time in 1891? A. I don't remember.

Q. Was it when Erle was here? A. No, sir; I think it was after that. I am not positive.

Q. When was it that Erle was here? A. I can't tell you
345 that either. Those dates I cannot remember.

Q. Was it spring or summer or fall? A. It is impossible for me to remember.

Q. Do you remember when you paid Erle the money here? A. I don't remember the day.

Q. Well, do you remember the month? A. No, I can't state that, either.

Q. Was it the spring of the year? A. I suppose the account will show when it was. I cannot say.

Q. When and where was the last time that you ever saw Mr. Tracy? A. I think it was in 1891, sir.

Q. Where? A. At the National hotel.

Q. In the city of Washington? A. Yes, sir.

Q. And whether or not it was after you had paid Erle the $1200 you do not know. A. I think it was after that; yes, sir.

Q. How long? A. Oh, I cannot say.

Q. Were you here several times during that year? A. No sir. After I paid Erle I went off from here and went over to see my nieces, I think, in Frederick, and I was sick over there a few days; and I think on my way back then I saw Mr. Tracy for the last time. I came by Washington, and I think that was the last time I
346 ever saw him. I cannot state positively.

Q. Do you know what Mr. Tracy did with the money he received from that property—the Maryland Avenue property? A. I do not, sir; I do not. I know nothing of it.

Q. He never gave you any explanation about it at all? A. No, sir.

Q. Either as to when the property had been sold, or what he got for it? A. He wouldn't tell me what he got for it.

Q. Did you and Erle agree that Mr. Tracy should invest the money, that it might be earning something while in his hands? A. I did not, sir.

Q. You never did? A. I never did.

Q. You never knew that he had invested it? A. I did not.

Q. And you let it remain in his hands from 1891, then, without any further effort to get it? A. Only that I gave this order on him. I thought possibly he would pay it. I say I gave an order—I don't know. I gave this statement of his, this certificate, and I may have given Erle an order on him for it. I don't know about that.

Q. But you never made any other effort at all to get it? A. No, sir; because I didn't think there was any necessity of doing it.

347 Q. Why? A. I didn't think he would pay it. He refused to pay it to me.

Q. Did you not think you had any remedy against him? A. No, sir; I didn't think I had.

Q. Why? A. I don't know why; that is all. I didn't think I had.

Q. It was a plain, clear debt, was it not? A. I don't know sir; I guess it was. I can't say whether it was or not.

Q. From 1891, then, when you had this conversation, until he died, you allowed the thing to remain in his hands, without making any effort to recover it except what you have stated? A. Yes, sir; that is all.

Q. Do you know what, if any, disposition he made of any part of that money? A. I do not, sir.

Q. Do you know of his paying Erle money from time to time? A. I do not.

Q. You never heard of that at all? A. No, sir.

Q. Until now? A. Until now; I don't know anything of that.

Q. You do not know that after 1891 Mr. Tracy ever paid Erle any money? A. I do not.

Q. You never heard of it, did you? A. No, sir.

348 Q. Not until now? A. No, sir.

Q. You never heard that he had paid Erle any money? A. I don't know that I ever heard anything about it at all. I don't remember of ever hearing anything.

Q. Since 1891, then, your connection with the estate has been merely with reference to the spending of the money that you received in 1888? Is that so? A. Well, I can't say that it is, sir.

Q. What else did you do with it? A. I tried to increase the property; but like many others I was unfortunate.

Q. Did you have any communication with Mr. Tracy on business matters after 1901? A. I did not.

Q. No letters? A. Oh, I believe he wrote to me after that.

Q. About what? A. Why, I can't tell; something about——

Mr. Johnson: I object to the witness stating the contents of the letters.

The Witness: I can't tell the contents of the letters.

By Mr. Wilson:

Q. Have you got the letters? A. Why, they have been in evidence here.

Q. Only the letters that are in evidence? A. Those are the only ones.

Q. The only ones you have received? A. Yes, sir. I have not any memory that I have received any others.

Q. Did you keep any copies of the letters that you wrote
349 to him? A. did not.

Q. When you came here in 1888 and got the notes, Erle was not here at all, was he? A. When Mr. Tracy gave me the notes?

Q. Yes. A. Oh, no, sir.

Q. When you came here in 1891 Erle was here, was he not? A. Let me see—in 1891? Why, yes, sir; Erle and myself were here then.

Q. That was the time when you gave him a check for $1200, was it not? A. Yes, sir.

Q. Where did you find him? Where did you first see him here in the city of Washington? A. He came with me from Virginia down here. He was on his way to Philadelphia, and I came on here with him as far as Washington.

Q. And he had been with you in Virginia? A. Yes, sir.

Q. How long? A. Oh, a few days.

Q. He had come from Texas alone? A. Yes, sir.

Q. And found you in Virginia? A. Yes, sir.

Q. And you came on here together? A. Yes, sir.

Q. Now, where did you stop? A. We stopped at the National hotel.

Q. Together? A. Yes, sir.

350 Q. And was Mr. Tracy stopping there? A. Yes, sir; I think he was. Yes, sir; I think he was stopping there then.

Q. Had Erle ever seen him before? A. No, sir.

Q. Did you introduce him to him? A. I did.

Q. Where? A. At the hotel.

Q. In whose room? A. Why, I think it was in the hall when I introduced him. It was not in any room; it was in the hall there.

Q. The hall of the hotel? A. Yes, sir.

Q. What occurred at that interview? A. Nothing more than that I introduced him.

Q. It was merely an introduction? A. That was all.

Q. How long did you remain here on that occasion? A. Oh, a short time; I don't remember.

Q. What did you come here for? A. I came here on business connected with this, you know; and I wanted to transfer those two notes to Erle, and pay him the $1200.

Q. What business had you here? A. I think it was about that time that I drew some money from the bank.

351 Q. But it was not necessary for you to come here to draw money, was it? A. I wanted to do it: I wanted to carry the money in person.

Q. To carry the money where? A. With me.

Q. Where from? A. From Washington. I drew, I think, $4,800. I think the account will show it there; I don't remember now.

Q. Was that when you were here with E. H. Turner? A. Let me see it.

Q. I want you to answer the question. A. I can't remember, sir.

Q. You can't remember? A. No, sir not without seeing the account.

Q. But you did draw $4800? A. Yes, sir: I did.

Q. What for? A. Because I wanted the money.

Q. What did you do with the money? A. I took it and used it.

Q. Where? A. In Texas.

Q. Did you take $4800 in money with you? A. Yes, sir; I carried it on my person.

Q. On your person? A. Yes, sir.

Q. In greenbacks? A. Yes, sir.

Q. Why did you carry money from here to Texas? A. Because I didn't want to send it through means of exchange, or any-
352 thing of that kind.

Q. Why not? A. I had reasons for it, sir.

Q. Well, what were they? A. I don't know that it would concern this case at all.

Q. Yes, it would. It might have quite an important bearing on it. A. I don't think it would be of any importance at all to the case.

Q. Tell me, please, why instead of taking a draft or getting a check, you drew all the money, and preferred to put it in your pocket and carry it with you? A. Well, because I had reasons for it, Mr. Wilson. I don't think it will be necessary——

Q. I am very sorry. I do not want to pry into your private affairs; but this is money, you know, that did not belong to you? A. If it had any bearing at all in the world on the subject I would not hesitate a minute to tell you.

Q. But you cannot judge of that, you know. I must insist upon you telling it. A. Well, if you want to know, one reason was that I didn't want these heirs in Virginia to know where the property was. I was trying to keep it concealed as much as I could, and I was managing my own affairs, and didn't want anybody to know anything about it; and I was trying to get the money away from here, away from Washington, entirely.

Q. That was three years after you had gotten the notes, was it not? A. No, sir; I got the notes in 1888.

353 Q. This was in 1891, was it not? A. This was about in 1891. Well, yes; but, you see, they were only collected along during that time. I tried to keep the amount drawn out about as near as fast as the notes were paid.

Q. Well, of whom were you particularly afraid? A. Oh, I only feared that the heirs, you know, would——

Q. Well, who was it? A. His relatives in Virginia.

Q. Which relatives? A. All those I have named to you. That is all.

Q. Had any one of them ever—— A. Mr. Tracy suggested to me that they would likely try to break the will; and that is one thing that scared me about it; and he suggested to me to get it away from here as fast as it was paid in.

Q. And you came all the way here to draw your check here and get the money? A. No, sir; I didn't come all the way here for that purpose. I came here, I said, to give Erle those notes and pay him; and while I was here I think (I am not positive, but I think) I drew that money. I am not positive whether it was that or not. I was here in Virginia, close by.

Q. How did you suppose that you could protect yourself any better against the heirs, your nephews and your sister, by taking the money and putting it in your pocket, than you could protect yourself against them by getting a draft on New York, for instance? A. Oh, well, I cannot answer the question.

354 Q. Did your sister or any of your nephews and nieces ever make, to your knowledge, any threat to break the will? A. Not to me.

Q. Were you ever informed that any one of them had ever made a threat to break the will? A. Oh, I heard rumors in some way.

Q. Who did you hear them from? A. I can't tell you, sir.

Q. Can you name any person from whom you heard any such story as that? A. No, sir; I can't name any of them now, for I don't remember who.

Q. At the time you met Erle here, then, he stayed with you at the hotel as long as you were here, did he? A. Yes, sir. He went on to Philadelphia.

Q. The same day that he got the check? A. I don't think he went the same day. Possibly he did. I can't say, sir. I know he went right on. As soon as I paid him he went on, and I was here maybe a day; I don't remember; I think then I went over to Maryland a few days, and came back by here.

Q. This check of E. H. Turner appears to have been dated April 10th. When had you been in the city last before that month? A. I can't remember, Mr. Wilson, right now, to save my life.

Q. Where were you between the first of January and April in that year, 1891? A. I think I was in Virginia. I may have made a trip to Washington during the time; I can't say.

Q. What were you doing in Virginia? A. I was living there, sir—that is, staying there.

Q. Had you any occupation? A. Not there.

355 Q. You returned to Texas after you paid Erle the $1200? A. Yes, sir. After that I returned to Texas. I don't remember how long after; not a great while.

Q. But you paid him the $1200? A. Yes, sir.

Q. Do you remember of being in company with Mr. Tracy with Erle at any time after you introduced him? A. No, sir.

Q. That was the only interview you three had together? A. Yes, sir; that was all.

Q. That was the only time you ever saw them together so far as you know, was it? A. Yes, sir.

Q. In giving a statement or estimate of the expenditure of the money that you received from Mr. Tracy, you put down your family expenses from January, 1889 to June 1890, at $1,000; did you not? A. Yes, sir—about.

Q. About what were the expenses from June 1890 until 1898? A. I couldn't tell you, sir.

Q. Were they at about the same rate, or more, or less; and how much more or how much less? A. I can't tell you, sir.

Q. You must have some general idea about it. Did it cost you at the same rate for those years that it cost you from January 1889, to June 1890—that is, about a year and a half? You say $1,000.
Now, how much was it from 1890 to 1898, approximately?
356 A. I can't say, sir.

Q. Were they less than $1,000 a year? A. I don't know, sir.

Q. Were they less than $500 a year? A. I couldn't tell you; I don't know, Mr. Wilson.

Q. You cannot give any answer whatever? A. No, sir; not as to that.

Q. You could not tell approximately, even, as to what it cost you to support your family from June 1890, until 1898? A. I have answered as far as I could that from the summer or fall of 1890 my wife and the two younger children remained in Virginia until January 1894; and I stated in my testimony that I sent her, for the support of herself and those children during that time, at least $1500.

Q. How was it after 1894? A. In January, 1894, I carried them back to Texas; and from that time on I could not tell you what their expenses were, because I was making the expenses then myself. This money had been exhausted by that time.

Q. How were you making the expenses? A. With my farm there.

Q. You were making the money out of the farm to support them, were you? A. Yes, sir; as much as we could.

Q. And how much you made out of the farm you have no idea? A. No, sir; I can't tell you now. A portion of the time, in 1895 and 1896, the crops were a failure there, and we were pretty hard run.
We lived pretty close then; and our place was forfeited, and
357 all that. After that I entered the place anew, and went to
work again, and the crops got a little better, and from that time on we lived a little better. I can't tell you exactly what it cost. The last few years I have had better crops, and the family, my wife and the children, have had more.

Q. The crops have improved, and since then you have been able to pay more? A. Yes, sir.

Q. How was it up to 1898? Had the crops improved any up to that time? A. Not much; not much.

Q. Whether the crops were good or bad I suppose, however, they had to live, they had to be clothed, they had to be fed, and they had to be educated from 1894 to 1898; did they not? A. Yes, sir.

Q. And how much it took a year, or about how much it took, you do not know. A. I can't say.

Q. You cannot state at all? A. No, sir; I cannot.

Q. But you do know that all the money you had to support them with during that time was money that came from Mr. Tracy? A. For that time, yes, sir, except what I made on the farm there—the proceeds of it.

Q. You said that the education of Wilmer between 1891 and 1895 cost about $800? A. Yes, sir; I estimated it at about that.

Q. How much did the education of the other children cost?

358 A. Oh, well, I can't say sir; because they were just sent to smaller schools, you see. She was sent off from home.

Q. And you cannot tell how much the education of Ashby cost? A. I couldn't tell you, sir.

Q. You cannot say? A. I cannot tell. Now, in the last year or two I sent him one year to the Southwestern University of Texas. That cost me between three and four hundred dollars. That was not this money, though.

Q. What money was that? A. That was money I made on the farm there myself.

Q. It came from the farm? A. Yes, sir.

Q. You distinguish between the money that was made out of the farm and the money you got from Mr. Tracy, do you? A. I only distinguish in this way—that this was at a time lately, when all that property was gone, and I had only the means that I made out of the farm. That is the only way I distinguish it.

Q. There is a statement in the bill of complaint in this case, in paragraph 10, to the effect that "the said Tracy (meaning Philip R. Tracy) retained in his possession down to his death, with the exception of $1400 aforesaid, the entire trust fund, principal, interest and profits, and the same have come into the possession of the defendants, his executors." Is that true? A. I don't know, sir.

359 Q. Did he retain the entire trust fund that he received from your brother in his possession down to the time of his death? A. I don't know that I can answer that question. I have told you what I received from him.

Q. Did he not pay over to you about $25,000 of the trust fund? A. He paid over twenty odd thousand dollars. In the list that he gave me the Maryland Avenue lots were included, which he never did pay me. If you take that from it, I think it was about twenty-two thousand and something.

Q. Do you mean to say that you cannot answer the question that I have just put to you in any more definite way?

Mr. JOHNSON: One minute. I object to the witness being called upon to answer as to any averments in the bill of complaint to which he is not a party, first on the ground that it is not cross-examination, the witness not having been asked any question as to any averment in the bill; second, because the averment of the bill involves a statement of fact and a conclusion of law, and the witness is not competent to express any opinion about it.

(At the request of Mr. Wilson, the pending question was read to the witness by the examiner.)

A. He didn't retain it all. He turned some of it over to me.

By Mr. WILSON:

Q. Then the entire trust fund could not have gone into the possession of his executors? A. I don't know, sir.

360 Mr. Johnson: I object to that as calling upon the witness to make a deduction or argument, and as not being a question as to any fact within his knowledge.

By Mr. Wilson:

Q. You said that you called Mr. Tracy's attention to the fact that there were certain notes that were enumerated in Exhibit E. H. T. No. 22 that were not included in the list which was signed by you, and for which you gave your receipt? A. I did.

Q. What did he say? A. He would not give me any satisfaction about it. I didn't know whether the notes were good or not. He said they were.

Q. You did not know whether what notes were good? A. Those that he substituted. I didn't know whether any of them were good or not. Of course I could not tell.

Q. You knew as much about those that were substituted as you did about any of the others, did you not? A. I certainly knew as much about them as I did about any of the others, for I knew nothing about any of them.

Q. You knew nothing about any of them? A. No, sir; but after admitting that he had the notes in the original list, it looked strange to me that he would substitute other notes for them, and I asked him why, and he didn't give me any satisfactory explanation of it, and I never could get any.

Q. He did not say to you that those notes that were not enumerated in the receipt had been previously paid, did he? A. No, sir; he did not.

361 Q. Do you know whether they had or had not been previously paid? A. I do not, sir; I cannot tell you.

Q. You never made any inquiry? A. No, sir; I did not, because I had no means of making any inquiry.

Q. You could not make any? A. No, sir.

Q. You had the names of the persons who made the notes, did you not? A. Yes, sir.

Q. Could you not have made inquiries from them to ascertain whether they had been paid or not? A. I suppose I might have asked them, and they might have answered me that they didn't know me, or something of that kind. I couldn't tell you anything about that.

Q. What did you understand to be the difference in dollars between the aggregates on the two lists at that time? A. Why, the difference in the notes amounted to something over $6,000.

Q. That is, there was $6,000 more in the list marked "Exhibit 22" than there was in the one that you signed a receipt for in full? A. Yes, sir.

Q. And you signed that receipt in full simply because of his explanation, without making any further inquiry, did you?

362 A. I signed it because I thought it was the best I could do.

Q. Well, what do you mean by being "the best you could do"? A. I didn't know that I could make anything out of Mr.

Tracy by a lawsuit, and I was afraid to antagonize him, and I was afraid of all these troubles that he had spoken of to me, and I thought I had better take that than perhaps do worse; I couldn't tell.

Q. Did you sign that receipt in the belief on your part that you were signing for $6.000 less than you were entitled to? A. I did, sir.

Q. And you gave up the $6,000 and made no effort whatever to recover it? Is that so? A. I simply did it out of fear that I could not recover it. I didn't know, and I was afraid of it. I was afraid to attempt to sue Mr. Tracy. I didn't know whether a judgment against him would be worth anything or not.

Q. Did you take any advice from anybody? A. Oh, well, no. sir; I can't say that I did. I took my own advice, which I have been in the habit of taking a good deal in my life.

Q. You did not consult Mr. Hunton on that proposition at all, did you? A. No, sir; I don't remember that I did, because I only consulted him at first about probating the will, and I would have employed him if I had had any further trouble in the matter; but I thought possibly I had better take that compromise that Mr. Tracy offered me and let the matter end there.

363 Q. Then when you finally signed that receipt and got the notes, you got $6,000 less than you thought you were entitled to, did you? A. I did, sir; yes, sir.

Q. Did your brother say anything to you in regard to your method of dealing with Mr. Tracy? A. No, sir; I can't remember that he said anything about that.

Q. Did he have any suggestions to make to you about the conduct of the business with Mr. Tracy? A. He only remarked to me that I would find everything right in Tracy's hands; and he was satisfied Tracy would do right about it. That is all that I remember now—something like that.

Q. Yet you were satisfied that Tracy was doing entirely wrong to the extent of $6,000? A. I thought so, sir; I thought so.

Q. And yet you made no effort to correct it? A. Oh, well, now, I don't know whether I made any effort to correct it or not. I simply took the compromise because I thought it was the best I could do; that was all.

Q. And you accepted that, and gave the receipt in full simply because you thought you could not recover the $6,000? Is that so? A. Yes, sir; I thought I was doing the best I could. I was afraid to attempt anything further.

Redirect examination.

By Mr. JOHNSON:

Q. I would like you to state, Mr. Turner, whether or not at the time you settled with Mr. Tracy his representation that you would have to pay several thousand dollars inheritance tax if the matter went through court had anything to do with the settlement?

364 Mr. WILSON: I object to that as incompetent and inadmissible and not proper redirect examination.

A. As I have stated before, it certainly had. It helped to induce me to take the compromise that he offered me, as I considered it.

Q. Had his representation that the heirs would contest the will if the matter was settled in court and involve a large expense and danger have any influence?

Mr. WILSON: That is objected to for the same reason.

A. Yes, sir.

By Mr. WILSON:

Q. State what if any measures you took to ascertain what the succession or inheritance tax would be on that estate? A. I took none because I supposed Mr. Tracy knew.

(The further taking of these depositions was thereupon adjourned until Wednesday, May 29th, 1901, at 11 o'clock, a. m.)

365 WASHINGTON, D. C.,
WEDNESDAY, *May 29th*, 1901—11 o'clock a. m.

Met pursuant to adjournment.

Present on behalf of the complainants, Mr. Johnson.

Present on behalf of the defendants, Messrs. Nathaniel Wilson and Clarence Rich Wilson.

THOMAS M. TURNER, the witness under examination, when the adjournment was taken, was recalled, and his redirect examination continued, as follows:

By Mr. JOHNSON:

Q. Mr. Turner, after you returned to Louisiana after your brother's death, could you have continued to support your family as you had done before leaving there? A. I think I could, sir.

Q. Did you voluntarily abandon any effort there and go to Texas; or was there any circumstance that compelled it? A. I voluntarily quit business there and went to Texas, thinking I could do better there, and that I could use these other means to better advantage.

Q. You have already stated that you purposely and intentionally did not disclose the facts as to the nature of your brother's will, the character and amount of his estate, and the fact that any part of it had been turned over to you; and you have stated the special reasons why you did not wish your children to know anything
366 of it. I will ask you to state why you concealed those facts from everybody? A. Principally for the reason that I feared an effort on the part of the relatives of my brother to contest the will; and in conversation with Mr. Tracy he advised me to keep it as quiet as possible, and get the means away from here as quick as I could.

Q. After the money was all gone, what reason was there in your mind for still keeping quiet about it? A. Well, then, sir, I felt very badly over it, and I was very much distressed and chagrined that I had lost the money. I suppose that was the main reason then that I did not have anything to say about it.

Q. In speaking about the proceeds of the farm in Texas which you disposed of this spring, was all the purchase-money paid in cash? A. No, sir; the terms of the deed that I brought to you will show that the purchase price was $5,000; that one note was given payable in thirty days for $2500, and the other note was given for the balance, with about $400, the amount of the deed of trust, taken from it. That note was also credited with the $205 that I owed the purchaser, which left about $1895 due on that note. When the thirty days expired the purchaser paid me $2,000, and requested me to wait a while for the other $500, which I did.

Q. You mean $2,000 on account of the $2500 note? A. The $2500 note that was due in thirty days. I turned over the $1895 note and the $500 balance on the other note to my wife in payment of what I owed her, leaving $85 due her on that settlement, which was to come out of this $1800. I paid $200 debts, which re-
367 duced the $2,000 to $1800. Now, there was $85 due her on that settlement out of that $1800, and I owed $100 other debts still, which would leave $1615 in cash.

Q. So that the settlement you made of what you claim to be your indebtedness to your wife was with notes? A. Yes, sir, principally.

Q. All but about $85? A. All but $85.

Q. And the balance of the purchase-money is in cash? A. In cash.

Q. You have stated that that was in a bank? A. Yes, sir.

Q. I do not think you have stated in what bank. A. I don't think I did. I can give you the name of the bank if you wish.

Q. I do not care anything about it. But since you have gone into it, you might as well state it. A. It is the Waggoner National Bank of Vernon.

Q. Was that money in any other place than a bank at any time? A. This money I have on deposit there?

Q. Yes. A. Yes, sir. I stated the other day that I had it deposited privately. I did have it there at first; but when I got to examining the matter, after Mr. Wilson asked me to give him a statement, I found that before leaving I had deposited all of it in the bank.

Q. You have given here your detailed estimate of the disposition of the money you got from Tracy as far as you are able to do so at this time. Did you make that the subject of consideration prior to coming here to testify? A. Yes, sir.

368 Mr. WILSON: I object to that form of question, which consists in stating what the witness has testified to, and then adding to that a question which is objectionable and leading and not proper redirect examination.

By Mr. JOHNSON:

Q. If you did do so, please state as nearly as you can when it was, and at whose instance. A. I do not remember the time. It was some time since. I received a letter from your firm, Carlisle & Johnson, requesting me to give you as nearly as I could a statement of the manner in which I had disposed of the property; and from what information I had on hand and from memory I investigated as closely as I could, and made up the statement.

By Mr. WILSON:

Q. Was that statement in writing? Was that a written statement? A. I sent a statement to the attorneys.

Q. Have you a copy of it? A. No, sir.

Q. Is the original here? A. I do not know, sir.

Q. Have you seen it lately? A. I have not. In a letter to them I stated——

Mr. WILSON: I object to the witness stating as to what that statement was, unless it is produced; and I call for its production.

By Mr. JOHNSON:

Q. I want you to state whether or not you have been present here while your son, Erle Turner, testified? A. I have not.

369 Q. State whether or not you have been present while your daughter, Miss Wilmer Turner, has been testifying? A. I have not.

Q. State whether or not you have read the report of the testimony of either of those persons? A. I have not, sir.

Q. State whether or not you have been informed of the substance of their testimony by any person. A. I have not, sir.

Q. You have been asked on your cross-examination on several occasions and with respect to several matters as to what you understood as to your own rights and the rights of others. I will ask you to state whether you ever understood that you personally could maintain any suit against Mr. Tracy on any account or for any purpose? A. I did not think that I could. I had no cause to think so, sir.

Q. Did you understand that you were personally a beneficiary under the will? A. No, sir; I was not.

Q. Did you understand that you were named as executor, or authorized to act as such, under the will? A. No, sir; I was not named as such.

Q. Had you ever been to Texas prior to your brother's death? A. Yes, sir.

Q. Do you know when? A. I was in Texas about the time that the Confederate armies were surrendered.

Q. After you went to Louisiana to live, between then and 370 your brother's death, had you ever been in Texas? A. No, sir.

Q. Had you ever resided there? A. Never.

Recross-examination.

By Mr. WILSON:

Q. You have stated, in reply to a question by Mr. Johnson, that you could have continued to support your family in Louisiana. Were you in debt when you left there? A. When I left Louisiana? No, sir.

Q. Not at all? A. No, sir.

Q. You had no debts? A. No; not when I left there.

Q. Were you in debt at the time you went back there with this money? A. I owed some money; yes, sir.

Q. How much did you owe? A. I owed some accounts there, I think. I can't tell exactly, sir.

Q. Well, approximately? A. Possibly, $300.

Q. For what? A. Store accounts.

Q. Not more than $300? A. No, sir; I do not think I owed more than about that.

Q. Did you owe anything on the farm, the place? A. Yes; there was a debt on my wife's farm there. I believe that was about $300.

371 Q. $300 more? A. Yes, sir.

Q. And what was the farm sold for? A. $1,000.

Q. And your salary was what as deputy clerk? A. My salary then, as clerk and for other work I did there, was about $1,300 a year, I think.

Q. How much was your salary? A. About $1,000; a little over $1,000.

Q. And the other $1,300 you made up in various ways? A. Yes, sir.

Q. Did it cost you $1,300 a year to take care of your family? A. Well, I do not remember positively, sir, how much it cost me.

Q. Well, about that? A. I could not tell you exactly.

Q. It cost you all you got, did it not? A. Well, I lost some money a short time before that, some money I had loaned there. There was a very particular friend of mine who died suddenly and owed me between five and six hundred dollars. That was one cause of my being in debt at that time. I could not get that.

Q. How long had you been receiving $1,300 a year? A. Oh, I don't know sir, that I actually received $1,300. That is an estimate. I could not tell you that that was the exact amount that I received even then; but I say I think about that. I stated in my testimony before fully the whole time I was there, as near as I could remember, what pay I got for different employments.

372 Q. But at the time of your brother's death, you were $600 in debt on your own account and on account of the farm? A. Yes.

Q. And you had no other assets? A. No, sir; I had none.

Q. None whatever? A. No, sir.

Q. Did you own the furniture in the house that you lived in? A. Oh, well, I suppose I owned it. I considered that I did.

Q. What became of that, did you take it to Texas? A. No, sir. I sold that out there before I went.

Q. What did it realize? A. Oh, I don't remember, sir.

Q. Approximately? A. I could not tell you. I do not think it amounted to a very great deal.

Q. $100; $500? A. Oh, no; I could not say, sir; I do not remember.

Q. You kept no account of your household expenses in Louisiana? A. No, sir; I did not.

Q. You stated that you went to Texas to better your condition, and you thought you could make better use of the money that you got from your brother's estate there. A. Yes, sir.

Q. You had in view the benefit of your children, your family, as well as yourself? A. Certainly, sir.

Q. It was chiefly on their account that you went there?
373 A. Yes, sir. My family has always been first in my estimation in all things.

Q. Did your children ever find fault with you for what you had done with this money? A. Not that I know of, sir; not to me.

Q. Have the relations between yourself and your children continued to be affectionate? A. I think so, sir. They have always been very respectful to me.

Q. They have never said or done anything to lead you to think that they thought that you had been actuated by any motive except their interest? A. Never that I remember of, sir, at all.

Q. And whatever mistake you may have made, you intended to serve their interests from the time that you got the money? A. I certainly did, sir. I hoped to increase it; and had I been successful I should certainly have given it to them. When I found that I had made a bad thing of it, it distressed me very much, sir.

Q. What did you understand to be the authority or right that you had to give any of the money which you got from your brother's estate to any person except the two nieces? You gave money to others. What was your authority for doing it? A. The relatives?

Q. Yes. A. Oh, I had no authority, only in this way; I was trying to keep them from attacking the will. I was trying to keep them
in a friendly way until I could get the matter in shape so that I
374 could control it. I had promised my brother that I would
protect it. He had directed me to do that. He said he did not want them to have it; and I was in a peculiar attitude.

Q. I understood you to say that none of them ever threatened to you or to your knowledge that they would dispute the will? A. None of them ever threatened to me that they would; but I dreaded it, and feared it, and tried to keep them in a friendly attitude with me for that reason.

Q. Do you remember how you came to make the acquaintance of Mr. Eppa Hunton, Junior? A. I went to have the will probated.

Q. You had not known him before your visit for that purpose? A. No, sir; I had not known him. I had known his father well before.

Q. How did you come to know him? A. To know who?

Q. Mr. Eppa Hunton, Junior? A. Only as a lawyer.

Q. Did any one go with you to see him? A. No, sir.

Q. Was there any one at Warrenton or near Warrenton at or about the time of your brother's death who seemed to know and who did know, so far as your observation was concerned, anything of your brother's affairs? A. No one that I knew of, sir.

Q. Do you remember a Mr. Ogilvie there? A. Yes, sir.

Q. What was his full name? A. John Ogilvie.

375 Q. Where did he live? A. I don't know where he lives, sir.

Q. Did you see him there? A. Yes, sir.

Q. What was the occasion of your seeing him? A. Why, he was a relative. He came to the place where my brother was sick.

Q. Is he living? A. I don't know whether he is or not, sir.

Q. Was he at the house before your brother's death? A. Yes, sir.

Q. And was he there at the funeral? A. I don't remember whether he was or not, sir. I cannot say.

Q. Do you know if he had any knowledge of your brother's affairs? A. Not that I know of, sir.

Q. He never told you anything about then? A. He did not tell me.

Q. Did he converse with your brother while he was there? A. Well, for some time, I imagine, previous to that, he and my brother had not been on speaking terms. A short time before his death he happened to be there, and my brother requested me to go and tell him to come to his room, as he wanted to speak to him. He went there, and my brother said to him that they had been at outs, or I don't remember the expression, but that they had not been on speaking terms or something of the kind, and that he expected to die shortly, and that he wanted to say to him that that feeling was gone and offered him his hand.

376 Q. That was in your presence? A. In my presence; yes sir.

Q. Was anything said about business at that time? A. Not a word, sir.

Q. Did you see him again after that? A. I don't remember whether I did or not, sir.

Q. Did you go with Mr. Ogilvie to Mr. Hunton? A. No, sir.

Q. Did Mr. Ogilvie go with you to introduce you to Mr. Hunton? A. No, sir.

Q. Who did? A. I don't remember that any one introduced me. I may have gone to see Mr. Hunton of my own accord. I don't remember about that particularly, sir. I had a cousin there who was clerk of the court at the time, and I cannot say. He may have introduced us.

Q. What was his name? A. His name was Turner; I believe it was John Turner.

Q. What relation was Mr. Ogilvie to your brother? A. He was the son of Elizabeth Turner, who was one of the children of my father from the first marriage.

Q. Did Mr. Ogilvie know anything of the will? A. I do not know, sir.

Q. You never talked to him about it? A. No, sir.

Q. Do you know where and how your brother obtained the money; was there anything in his papers to show where and how he obtained the money that he sent to Mr. Tracey from time to time? A. Nothing at all, sir; that I know of.

377 Q. There was nothing to show when he began or when he ended sending the money to Tracey? A. No, sir.

Q. I understood you to say that you had sent a statement of what you had done with the money received by the estate to Messrs. Carlisle & Johnson. When was that? A. I do not remember the date, sir.

Q. About when? A. I suppose it was possibly two or three months ago, sir, or something like that. I cannot tell you.

Q. Was it in the form of a letter, or was it a separate paper making up the statement? A. Why, I just made up a list of the amounts.

Q. What did you make that up from? A. From what data I had, and from memory as far as I could.

Q. What data did you have? A. Why, I cannot tell you exactly, sir; some papers and deeds, and so on; and I had to estimate a good deal of it as near as I could.

Q. You sent that to Messrs. Carlisle & Johnson, did you? A. Yes, sir.

Q. Have you seen it since? No, sir.

Q. You kept *on* copy of it, I understood you to say? A. No, sir; I kept no copy. When I had made figures and calculations and so on, I had those on hand, you know, to refer to.

Q. Have you got those on hand now? A. I had them before I left Texas.

378 Q. Have you got now, in your possession here, any memorandum or statement in respect of the disposition of that fund, containing the items of money that you distributed or paid out? A. Yes, sir; I have got a memorandum of the amounts.

Q. In what form is that? A. It is just a mere list.

Q. Is it a separate paper, or in a book, or what? A. No, sir; it is in a common book, a blank book.

Q. It is in a blank book? A. Yes, sir.

Q. When did you make that out? A. Why, I made that out principally after I arrived up here, I believe.

Q. How much of it was after you arrived here? A. Well, I think most of the entire amount of expenditures.

Q. Will you let me see that memorandum? A. Why, it is a memorandum book that I use for different purposes.

Q. When did you begin to keep that memorandum book? A. I find that I have very little in it now except what I state. I had other memoranda, but they are not in it now.

Q. What has become of them? A. The other memoranda? Oh, they were nothing in regard to this matter. They were private matters.

Q. I say, were those torn out? A. Yes, sir; I have torn them out.

379 Q. All the memoranda in that book referred to the moneys of the estate, or the disposition of them, did they? A. Yes, sir; pretty much, and some other notes about it. For instance, I have the dates of the birth of my children here. I thought perhaps I might want to know that; and I have the date of the death of my brother, and the date that I first went to visit Mr. Tracy. I have got those things. I have also a list of the notes, in figures. I could not remember the amounts of the notes. I have got a list of them, the notes that I received from Mr. Tracy.

Mr. JOHNSON: I object to all this as not proper recross-examination, the witness having been interrogated on this very subject while he was testifying, and referring to this very memorandum.

By Mr. WILSON:

Q. I will ask if you will let me see the book? A. You can look over it, sir.

Q. This memorandum book contains merely the figures that you have given in your testimony? A. Yes, sir.

Q. The entries in that were not made at the time that you received the moneys, or until very recently, were they? A. These entries? No, sir. They were not made at the time I received the money.

Q. That is the only memorandum book which you have kept at ll or have in your possession in respect to the moneys of the estate, s it? A. Yes, sir; it is the only memorandum book that I have on the subject.

Q. And that was made up very lately? A. Yes, sir; from the data that I told you about.

380 Q. But as to books or memoranda or accounts or papers showing what you received or what you disbursed, you have not any? A. I have not any book of that; no, sir.

Q. You are here as a witness at the expense of the executors, are you not? A. I don't know, sir, how I am here, to tell you the truth.

Q. Well, do you not know that the executors provided the money or you to come here and remain here? A. I understood it that way, Mr. Wilson. I don't know now what arrangements you gentlemen made about it.

Q. You did not come here at your own expense? A. No, sir.

T. M. TURNER.

Subscribed and sworn to before me this 13th day of June, A. D. 901.

JOHN W. HULSE,
Examiner in Chancery.

381 Miss WILMER TURNER, a witness heretofore partially examined in this cause, was thereupon recalled for further direct examination and for cross-examination.

By Mr. JOHNSON:

Q. Miss Turner, I want you to state when, if at all, your brother Erle ever communicated anything to you with reference to the estate of your uncle, or with reference to Mr. Tracy? A. Never until the fall of 1897. After Mr. Tracy's death he wrote and asked me if I had any papers or letters.

Q. How did you know that it was after Mr. Tracy's death? A. He told me in the letter that Mr. Tracy was dead.

Q. Do you remember where you were at the time? A. I was at Massie's Mills, in Virginia.

Q. What were you doing there? A. I was teaching.

Q. With whom? A. I was teaching for Dr. Parsons.

Q. Now, you stated that that was 1897. Are you correct as to the year? A. No; I made a mistake there. It was the fall of 1898. I went there in September, 1898.

Q. Had he ever communicated anything to you on the subject before that? A. No; never.

Q. I want you to look at a letter marked "Exhibit T. M. T. No. 15" and state if you ever saw it before? A. Yes.

382 Q. State when and from what source it came into your possession? A. My mother sent it to me in February, 1899, I think.

Q. Had you ever seen it before that? A. No.

Q. Was it pasted on that sheet at that time? A. No.

Q. What was its condition? A. It was in four pieces.

Q. Do you know who pasted it together that way? A. Yes; Mr. Johnson did it.

Q. You mean your counsel? A. My counsel; yes.

Q. I show you a letter marked "Exhibit T. M. T. No. 17," dated "Vernon, Texas, February 17th, 1899." Will you state whose writing that is? A. My father's.

Q. Did you receive that letter from him? A. I did.

Q. This letter has been offered in evidence in this cause; and it appears therefrom that in it your father communicates to you the fact that Mr. Tracy had turned over to him a part of the estate of your uncle. I want to know now when, if ever, prior to the receipt of this letter of Mr. Tracy's, "Exhibit T. M T. No. 15," from your mother and this letter of February 17th, 1899, from your father, you had any knowledge or information of the facts therein contained? A. I had none.

383 Q. Was that the first information you had that your father had received any part of your uncle's estate? A. The first I had from him. I came here before I received these letters, and saw you.

Q. In what year? A. In 1899.

Q. I show you a paper marked "Exhibit T. M. T. No. 21," which is in evidence, and purports to be a deed from your father, your mother joining in it, to yourself, your sister, and your brother Ashby. I will ask you to look at it, and state when was the first time you ever saw that. A. I have never seen this before.

Q. Look at this paper marked "Exhibit T. M. T. No. 22," and state when you first saw that paper. A. This is the first time I have ever seen it.

Q. Where were you in September, 1894? A. I was at Kleinberg school, in Nelson county.

Q. What were you doing there? A. I was teaching.

Q. Had you ever heard in any way that your father had undertaken to transfer the farm in Texas to you and your sister and brother? A. Not until after I went home.

Q. My question is whether you ever heard it? A. Yes.

Q. From whom? A. From my mother.

Q. Where was it that she told you? A. In Vernon, Texas.

384 Q. Do you know in what year? A. In 1896.

Q. Did she tell you when it had been done? A. No.

Q. Did she tell you why it had been done? A. Yes; she said my father was in debt, and he did it to save the place.

Q. Did you ever take possession of the farm? A. No.

Q. Did you ever exercise any active ownership over it? A. No.

Q. Did you ever assert any right to it? A. No.

Q. Did you ever have possession of any of the personal property mentioned in that bill of sale—any horses or mules or farming implements or anything of that sort? A. No.

Q. You left Texas in 1896, I believe? A. Yes.

Q. At what time? A. In September.

Q. Where did you go? A. To Virginia.

Q. To what place? A. To Nelson county.

Q. What did you engage in there? A. Teaching.

Q. Did you ever go back to Texas? A. No.

385 Cross-examination.

By Mr. WILSON:

Q. Miss Turner, when you left Louisiana to go to Texas, you were about fourteen years of age? A. Yes.

Q. And you went to Virginia first in what year? A. In 1890.

Q. You were there at school, I believe? A. Yes.

Q. And did you return home from time to time? A. No; my mother was in Virginia.

Q. From the time you first went there, in 1890, until you began to teach, please state where you were and what you were doing. A. In September 1890, I went to Hollins institute, and left in June, 1891. The summer of 1891 I was in Albemarle county. We were boarding in the country.

Q. Your mother was there, too? A. Yes. In September 1891, I went to Kleinberg school, in Nelson county; and in June, 1892, I went to Alderson, West Virginia, where my mother was. In September, 1892, I went to Kleinberg school; and the summer of 1893 I spent in Alderson, West Virginia. Then in the fall of 1893 I went back to Kleinberg, and left in June, 1894. I spent the summer of 1894 in Moorefield, West Virginia, visiting a schoolmate. In September, 1894, I began teaching at Kleinberg. In June 1895 I went to Vernon, Texas.

Q. On a visit? A. Yes.

Q. How long did you remain there? A. Until September, 1896.

386 Q. More than a year, then? A. Yes. Then in September,
1896, I came to Virginia to teach in Nelson county; and I
taught in the same place for two years.

Q. That brings us to September, 1898? A. Yes. In September, 1898, I went to Dr. Parson's, near Massie's Mills; and in September, 1899, I went to Huttonsville, West Virginia, to teach. I came here in September, 1900.

Q. Have you resided here ever since? A. Yes.

Q. Are you teaching here? A. I was with a friend during the winter. She asked me to come and stay with her, and I helped her son with his lessons.

Q. Since you began to teach in September, 1894, have you depended upon your own earnings wholly and exclusively for your support? A. I have.

Q. You have received nothing whatever from your father or any one else? A. No.

Q. Either by way of money or clothing or otherwise? A. No.

Q. You returned to Texas for a year; you were there about a year in the meantime? A. A little over a year.

Q. Where were you living then? A. In Vernon, Texas.

Q. With whom? A. With my mother.

387 Q. In the homestead, the family home? A. Yes.

Q. Did you receive any money then, during your visit there? A. No. I had saved something from the year before, and I used that—my own salary.

Q. You lived with the family? A. Yes.

Q. Did you pay any board? A. No.

Q. But you supported yourself with your earnings, with the savings that you had from your teaching? A. Yes; and I really used part of it for things that were needed at home.

Q. How much did you have when you went to Vernon, in money? A. I don't remember; I think I had about $90.

Q. Your salary for the first year was how much? A. $125.

Q. And your board, I suppose? A. Yes.

Q. The next year it was how much? A. $100.

Q. And the next year? A. The next year, I think, it was $125.

Q. That was the year from 1896 to 1897; you went to Vernon, Texas, in 1895? A. 1895 to 1896.

Q. You did not earn anything that year? A. No.

Q. Then when you went back for a visit, you had only re-
388 ceived $125? That is all the money you had had? A. Yes.

Q. And you got your pass from Mr. Tracy? A. Yes.

Q. For all the distance? A. No; to St. Louis.

Q. How much did it cost you to go back? A. To get back home?

Q. Yes. A. I don't remember.

Q. Prior, then, to 1894, your tuition and your clothing and your board had always been supplied by your father, had they not. A. Yes.

Q. After you left Louisiana, and until the time that you left home to teach, what did you know or understand to be the source of income for the support of the family, yourself included? A. Why I didn't know. I never bothered myself about it. I never thought about it.

Q. Your father had no particular occupation except in connection with the farm? A. No.

Q. Your father was considered an affectionate father? A. Always.

Q. And did everything that he could do for your comfort and your education? A. Yes.

Q. And you lived and dressed and were educated as other girls
were in your position? A. Yes. I was in the country, at a
389 country school, and of course I needed very little in the way
of dress.

Q. Did you know that you had an uncle living in Virginia? A. Yes. My parents had told me so.

Q. Did you know of his death? A. Yes.

Q. Did you know of his having left any property? A. No; I did not know what he had left, or anything about his property.

Q. You never knew or heard that he had left any property? A. No; I don't remember knowing anything of it. I was a child, and never thought of it.

Q. When did you first know that he had left any property? I do not mean to you; but when did you first know that he had any property to leave to anybody? A. Why, I don't know.

Q. Up to the time that you left home to teach, the other children who were younger than you were taken care of as you were taken care of? A. Yes.

Q. When you were at home from June, 1895, to September 1896, was your brother Erle there at any time? A. No.

Q. Did you, from the time you left home to go to school, correspond with Erle? A. Oh, yes.

Q. Was your correspondence frequent? Did you keep up a regular correspondence? A. No; not very regular.

390 Q. Did you correspond with your father and mother? A. Yes.

Q. Pretty regularly? A. Yes. I always tried to write once a week.

Q. Was it when you were at home that your mother told you about a deed having been made to you and the other two children? A. Yes; in 1896.

Q. Was that in 1896? A. Yes.

Q. What time? I understood you to say you went there in June, 1895. A. Yes.

Q. And remained there until September, 1896. Now, I am asking you when it was that you heard about the deed. A. I think it was in February of 1896.

Q. How came she to tell you of it? A. Why, the taxes were due on the place, and they didn't have the money, and she told me about it; and it was in connection with it that she told me it had been turned over to the three children, and I gave the money to pay the taxes.

Q. You gave your mother the money to pay the taxes. How much were they; do you remember? A. No; I don't remember.

Q. Did she speak of the farm? A. Yes.

Q. And of any of the property on the farm? A. No; she just spoke of the farm.

Q. Have you any idea of the amount of money that you paid, approximately? A. No; I really do not remember.

391 Q. Did you say anything to your father about it at that time? A. No.

Q. Or he to you? A. No.

Q. Do you know what became of the farm? A. I was not there. I heard, afterwards.

Q. From whom did you hear it? A. From my mother.

Q. What did you hear? A. That they had to give the place up because the interest had been due for some time.

Q. You mean the farm? A. Yes.

Q. Did you know that your father afterwards acquired title to the farm? A. No; not until recently.

Q. When did you first know that? A. He told me since he has been here; and I cannot remember whether my father wrote to me before he came or not.

Q. Did he tell you what he had sold it for? A. He told me about what he had got for it.

Q. Did he tell you what money of the proceeds of the sale he has now in his possession? Do you know now what money he has in his possession as the proceeds of the sale of the farm? A. No; I really do not. He told me he was going to pay some of it to my mother, and I do not remember about the amounts.

Q. When did he tell you that? A. Last week, I think.

392 Q. You know now that the farm was bought with the money that came from Mr. Tracy, do you not—Mr. Tracy's estate? A. Yes; I have been told that.

Q. And you know now that he sold the farm, that same piece of ground, and has a part of the proceeds? You know that? A. He told me that he had.

Q. And he told you that he was going to pay it to your mother? A. Well, I said "going to;" he told me that he had.

Q. You did not make any objection to that? A. No.

Q. And have not any objection to that? A. No.

Q. Is your mother in Texas now? A. Yes.

Q. Is she in good health? A. Yes, so far as I know.

Q. You know now that the money that was used for your support and education, and for the support and education of your brothers and sisters and your mother from the time you left Louisiana until you left home was all obtained from your uncle's estate, through Mr. Tracy, do you not? A. I have been told so.

Q. Since you have known of the use that your father has made of the money which he received from Mr. Tracy, have you made any complaint to him, or any objection? A. No; none.

393 Q. Or any demand or request for the return of any part of it to you? A. No.

Q. Please state as definitely as you can the date when you first knew that the whole or a part of your uncle's property had been paid over to your father. A. He wrote to me in February, 1899; and that was the first statement I ever had from him. Now, possibly in January or February Erle had written me something about it; but it was after he said that he was going to bring suit.

Q. Who said that: Erle? A. Yes; he wrote me that.

Q. He wrote to you and told you he was going to bring suit? A. And asked if I had papers or anything.

Q. Have you a copy of the letter that you received from him? A. I do not think I have. It was just a few lines.

Q. Have you any letters from him in your possession? A. I don't remember. I have one, but it is nothing about this matter.

Q. You have not any letters in your possession received from Erle at any time, where he mentions this matter of the estate? A. I do not think I have.

Q. Are your letters here, what letters you have? A. Yes.

Q. I wish you would please look, and if you find any, let us know. Did you make any reply to this letter of your father's? A. I think I did.

394 Q. What did you say? A. I just thanked him for answering my letter and for giving me the statement.

Q. Have you your mother's letter in which she sent to you a list of notes? A. I think I have.

Q. Will you look for that, please? I refer now to the letter to which your father refers in his letter, saying, "I kept a copy of the list which your mother sent you on the 15th instant." That would be the 15th of February. Will you please look and see if you can find a letter from your mother on the 15th of February, enclosing the list of notes. A. I think most of it is of a private nature; but I can——

Q. I do not care to see that, of course. You can look to see, and if there is anything in it that you say relates to this, you can just make a copy of that. I do not care to see the letter; but I will depend upon you to tell me if there is anything there that relates to this business. If you will be kind enough to remember the date of your mother's letter, it is the 15th of February, 1899. A. Well, I do not know. I think that is a mistake. I think her letter is dated the 16th. The one that I have I think is dated the 16th; and I presume that is the one.

Q. Up to the time of the receipt of this letter of your father's dated February 17th, 1899, you had never heard any discussion in the family between your father and mother or Erle in respect of any moneys that were or were supposed to be in the hands of Mr. 395 Tracy, in which you were interested? A. No; I do not think I did. My father was always very reticent about everything, and he never talked about business matters with any of us, and I never asked him anything about any of his business.

Q. When you visited your home for about a year, where was the family living? A. In Vernon, Texas.

Q. In the house that your father bought there? A. Yes.

Q. What kind of a house was it? A. A frame house.

Q. How large; how many rooms were there in it? A. Seven.

Q. How many on the first floor? A. Four.

Q. Was it a double house; that is, was there a room on each side of the front door? A. Yes.

Q. And how many chambers? A. Three.

Q. It was a two-story house? A. Yes.

Q. Was it well furnished? A. Yes; right well. When I said that, though, I was not thinking of the last time I went back; I was thinking of the first time. The last time I went back a good deal of the furniture had been sold, and there were only four of the rooms furnished, I think.

Q. I suppose you have frequently been out on the farm? 396 A. Yes.

Q. Was there a house out there? A. Yes; a small house.

Q. What kind of a house? A. Why, a frame house, such as they put up on those farms. It had two rooms when I was there.

Q. Was Erle living in it when you were there last? A. No; Erle was not there when I was at home the last time.

Q. Who was there when you were there last? A. They had some man employed on the place; I don't remember who it was.

Q. When you made your last visit home, where was your father living? A. He was living there. Occasionally he would go out and stay on the farm a short time.

Q. But he was living in town? A. Yes.

Redirect examination.

By Mr. JOHNSON:

Q. Miss Turner, did you help any in the education of any of the younger children? A. Yes.

Q. Which? A. Ashby.

Q. In what way? A. Why, I sent money to help pay his tuition.

Q. That was while you were teaching? A. Yes.

397 Q. You were asked if you had made any demand on your father by reason of his dealings with this estate. I would like you to state whether or not when you first knew anything about his relations to the estate your interests were or were not in the hands of your counsel? A. Yes.

Q. Since you have put your affairs in the hands of your counsel, have you left the matter of making demands on anybody to them, or have you undertaken to control that matter yourself? A. I have left it with them. They occasionally have asked me to write and find out anything that I could about it.

WILMER TURNER,
(*By the Examiner, by Consent.*)

Subscribed and sworn to before me this — day of ——, 190–.

—— ——.

(The further taking of these depositions was thereupon adjourned until Thursday, May 30th, 1901, at 11 o'clock, a. m.)

398

WASHINGTON, D. C.,
THURSDAY, *May 30th*, 1901—11 o'clock a. m.

Met pursuant to adjournment.

Adjourned until Saturday, June 1st, 1901, at 3 o'clock p. m.

WASHINGTON, D. C.,
SATURDAY, *June 1st*, 1901—3 o'clock p. m.

Met pursuant to adjournment.

Present on behalf of the complainants, Mr. Johnson.

Present on behalf of the defendants, Messrs. Nathaniel Wilson and Clarence Rich Wilson.

MICHAEL I. WELLER, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, testified as follows:

By Mr. JOHNSON:

Q. Mr. Weller, you are in the real-estate business, and have been for a number of years? A. Yes, sir.

Q. In this city? A. Yes, sir.

Q. Were you acquainted with Philip A. Tracy? A. I was.

399 Q. Do you know of his being interested in some ground on Maryland avenue, northeast, between Ninth and Tenth? A. He was a stockholder in the Mutual Investment Company, which owned a square on Maryland avenue between Ninth and Tenth, northeast.

Q. Were you interested in that concern? A. I was. I was its vice-president.

Q. In what square was it? A. Square 937.

Q. On which side of Maryland avenue is that? A. The south ide.

Q. Do you remember the square on the north side? A. Yes, sir; quare 936?

Q. Yes. A. Yes, sir. I was part owner of that.

Q. Were you interested in that? A. That was owned by the Disrict Real Estate Investment Association, of which I was also a diector.

Q. Was Mr. Tracy interested in that? A. He never was.

Q. Now, will you please tell us when you gentlemen acquired square 937? A. The Mutual Investment Company bought that square in September, 1888.

Q. Can you tell us when it was sold?

Mr. WILSON: Have you got the deed?

Mr. JOHNSON: I have not.

A. In January, 1890.

Mr. WILSON: I object to his statement without the production of the deed. I object to his testifying as to the date of acquisition of title without the production of the deed.

400 Mr. JOHNSON: I have not asked him for the contents of any deed; I have simply asked him for the date of a transaction.

By Mr. JOHNSON:

Q. Do you know whether the deeds of conveyance were recorded or not? A. They were.

Q. Have you them in your possession? A. I have not.

Q. Do you know where they are? A. The only person who may have them is Mr. George T. Haslam, the secretary and treasurer of the company.

Q. Do you remember the price at which you acquired the property?

Mr. WILSON: I object to that question, as stating a consideration the best evidence of which would be the deed itself.

A. The Mutual Investment Company paid us 35 cents a foot for the property.

Q. Do you remember the price at which it was sold? A. The Mutual Investment Company sold the property at 55 cents.

Q. Do you know how much money Mr. Tracy had in the enterprise? A. I do not remember how many shares he held. The entire company comprised 200 shares of $150 each, $30,000. That was its paid-up capital.

Q. Do you remember now how much you had? A. I do not; I know how many I have now; but I could recollect how

401 much I had in the first organization of the company, in 1888.

Q. Did that company have any other assets and business than the purchase and sale of square 937? A. It organized for the purpose of buying that square.

Q. Do you know what percentage of profit the parties in interest made on the sale?

Mr. WILSON: Objected to as hearsay and incompetent.

A. We distributed over 50 per cent. profit on our investment.

Q. Did you participate in that profit? A. I did.

Q. Was there any inequality among the members; or did all get the same proportion of profit on the amount invested? A. There was no inequality whatsoever. Every share of stock received an equal proportion of the profits. I might add, if you wish, that I was one of the largest stockholders in the company.

Cross-examination.

By Mr. WILSON:

Q. In whose possession are the books and papers of this company now? A. They would probably be in the possession of Mr. George T. Haslam.

Q. What was the name of the concern? A. The Mutual Investment Company.

402 Q. Was it incorporated? A. It was incorporated; yes.

Q. Where? A. In Washington, D. C.

Q. When was it incorporated? A. About the time of this purchase; maybe a few days previous.

Q. And the purchase was when? A. In September, 1888.

Q. The property was held how long? A. About sixteen months.

Q. And sold in what year? A. January, 1890.

Q. To whom? A. To Jeremiah Fickling—that is, it was conveyed to Jeremiah Fickling.

Q. Who would know the amount of money that Mr. Tracy put into the concern? A. Mr. Haslam would know if he has retained all the books.

Q. Who else? A. Maybe one of our trustees. We had two trustees.

Q. Who were the trustees? A. James F. Hood and Joseph F. Batchelder. Mr. Hood is in the city; Batchelder is in Seattle.

Q. They were the trustees? A. Yes.

Q. Who paid you your money back? A. It was paid in a check, signed by the president.

403 Q. That was whom? A. William Mayse. I was vice-president. It was signed by William Mayse, and countersigned, I suppose, by Mr. George T. Haslam.

Q. Mr. Mayse, is dead, is he not? A. No sir; Mr. Mayse is in the Indian Territory, keeping a little country store.

Q. Who has his books? A. Mr. Mayse's books?

Q. Yes. A. Mr. Hood, I think, was appointed receiver of the defunct concern.

Q. Did you know Philip Tracy well? A. I made his acquaintance through the organization of this company.

Q. Do you know where he kept his account at that time? A. I do not know.

MICHAEL I. WELLER,
(*By the Examiner, by Consent.*)

Subscribed and sworn to before me this — day of —— A. D. 1901.

—— ——,
Examiner in Chancery.

404 WILLIAM E. EDMONSTON, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, testified as follows:

By Mr. JOHNSON:

Q. Mr. Edmonston, I show you a deed marked "Exhibit Erle H. Turner No. 13," and a letter marked "Exhibit Erle H. Turner No. 14," both dated the 27th day of April, 1898. Will you please state in whose handwriting that letter and deed are? A. The letter is in my handwriting; and the deed, except the printed part and the signature, is also in my handwriting.

Q. The deed appears to be executed by Philip A. Tracy. Did you know his handwriting? A. Yes, I knew his handwriting.

Q. Is that his signature? A. It is.

Q. Can you state how you came to prepare that deed? A. Mr. Tracy held an undivided one-tenth interest in a syndicate for the purchase and sale of square 649, of which William Mayse and myself were trustees. Mr. Tracy desired to transfer one-half of his tenth to Erle H. Turner. The trustees had printed certificates which were issued to the different syndicate owners. As those certificates provided only for a transfer of the entire one-tenth interest, I prepared this deed in lieu of making two certificates out of one.

Q. To whom did you send that deed and letter? A. I sent the letter and the deed to Mr. Tracy.

405 Q. I show you a letter dated May 5th, 1898, addressed to yourself, and ask you to state in whose handwriting it is. A. That is in Mr. Tracy's handwriting.

Q. Did you receive that letter from him? A. Yes.

"Exhibit W. E. E. No. 1," see page 537.

(The above-mentioned letter was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit W. E. E. No. 1.")

By Mr. JOHNSON:

Q. At the time you wrote that letter to Mr. Tracy and prepared that deed, did you know or had you ever seen Erle H. Turner? A. Never.

Q. Did you know why the papers were prepared, or anything about the relations between Tracy and Turner? A. No; I knew nothing about their relation.

Q. Did Tracy give you any information as to why it was to be done? A. No; I think not. I do not remember anything about it.

Q. After that letter and deed went out of your possession to Mr. Tracy, when and in whose possession did you next see them? A. In the possession of Mr. Turner.

Q. Mr. Erle H. Turner? A. Mr. Erle H. Turner.

Q. Where was that? A. In my office?

Q. In this city? A. In this city.

406 Q. Had you ever seen him before that? A. No; I had not.

Q. When he brought those papers to your office, I will ask you to state what if anything you did. A. He mentioned, I think, the fact of Mr. Tracy's death, of which I also knew; and I also knew of the fact that Mr. Tracy had left a will. Mr. Turner and myself had some conversation with respect to the matter; and I concluded by taking him over to the register of wills' office and there getting the will for him and allowing him to read it, or reading it to him —I have forgotten which. From what occurred between us, I inferred that he probably ought to have legal advice. As I was not practicing law, I brought him over, I think, to the office of Carlisle & Johnson, and introduced him to Mr. Luckett, who was the only one representing the firm who was at the time in the city, I believe.

Q. Do you know any other fact or circumstance connected with this transaction than what you have detailed? A. No; I do not recall anything.

(Cross-examination waived.)

WM. E. EDMONSTON,
(*By the Examiner, by Consent.*)

Subscribed and sworn to before me this — day of ——, A. D. 1901.

—— ——,
Examiner in Chancery.

407 Miss Wilmer Turner, a witness heretofore examined, in this cause, on behalf of the complainants, was thereupon recalled for further examination.

By Mr. Johnson:

Q. Miss Turner, when you were last testifying, you were asked by Mr. Wilson to produce here the letter of your mother transmitting to you the letter of Mr. Tracy dated "2/12/91." I ask you to state whether or not the letter which you have in your hand is that letter? A. It is.

"Exhibit Miss Turner No. 1," "1–A," and "1–B," see page 538.

(The above-mentioned letter, consisting of three sheets, was thereupon offered in evidence by counsel for the defendants; and the same is filed herewith, the several sheets thereof being marked respectively, "Exhibit Miss Turner Recalled No. 1," "1–A," and "1–B.")

By Mr. Johnson:

Q. She mentions a copy of a list of notes. Will you please look at this paper, and see if that is the copy she sent you? A. It is.

Mr. Wilson: I object to the question, as there is no mention whatever made in the letter of a copy of the list of notes so far as I know and can find out.

By Mr. JOHNSON:

Q. In whose handwriting is that paper? A. It is in my father's handwriting.

"Exhibit Miss Turner Recalled No. 2," see page 540.

408 (The above-mentioned list was thereupon offered in evidence by counsel for the complainants; and the same is filed herewith, marked "Exhibit Miss Turner Recalled No. 2.")

By Mr. JOHNSON:

Q. In this letter of February 16th, 1899, your mother says: "In answer to the 10th question, I ought not to have answered it as I did. The list I sent was a copy only." Do you know what those questions were to which she refers? A. I do.

Q. What were they? A. Questions written by my counsel to send to her, to be answered.

Q. Did you receive the questions back from her? A. I did.

Q. Look at this paper, and state if they are the questions? A. They are.

Q. Did you receive the answers to which she refers in that letter? A. I did.

Q. Look at these papers, and state whether or not those are the answers to which she refers. A. Yes.

"Exhibit Miss Turner Recalled No. 3," "No. 3–A" "No. 3–B," see pages 541–542. "Exhibit Miss Turner Recalled No. 4–A" "No. 4–B" "No. 4–C" "No. 4–D," see pages 543–544.

(The above-mentioned papers were thereupon offered in evidence by counsel for the complainants, and the same are filed herewith. The list of questions referred to consist of three sheets, marked "Exhibit Miss Turner Recalled No. 3," "No. 3–A," and "No. 409 3–B." The list of answers above referred to consist of four sheets, marked respectively, "Exhibit Miss Turner Recalled, No. 4–A," "No. 4–B," "No. 4–C," and "No. 4–D."

By Mr. JOHNSON:

Q. When did you receive those questions from your counsel? A. In February, 1899, the first time I came to see about the estate.

Q. I wish to ask you, Miss Turner, whether or not all the writings or papers signed by Mr. Tracy of which you have any knowledge have been offered in evidence in this case. A. They have.

Cross-examination.

By Mr. WILSON:

Q. I understand that your counsel gave you the questions that are written on yellow paper, and are marked "Exhibit Miss Turner Recalled No. 3," and you sent them to your mother. A. I did.

Q. And that your mother returned them to you with the answers that are written and constitute Exhibit 4, in the letter marked

"Miss Turner Recalled No. 2." Is that so? You got back the questions and the answers from your mother, did you? A. Yes.

Q. When did you receive those? A. I received those in February, 1899; I do not remember the day.

410 Q. You read them? A. I did.

Q. You knew then that Tracy had turned over the money mentioned in the answer to your father? A. I received a letter from my father about the same time telling me about the estate.

Q. You knew both from your mother's letter and your father's letter, then, what Philip Tracy had done in respect to the money that your father got? A. Yes.

WILMER TURNER.

Subscribed and sworn to before me this 17th day of June, A. D. 1901.

JOHN W. HULSE,
Examiner in Chancery.

Mr. Johnson: I offer in evidence the transcript copy of the will of Silas H. Turner, and of the probate thereof, in the county court of Fauquier county, Virginia, on the 28th of November, 1888.

"Exhibit S. H. Turner's Will," see page — 545.

(The above-mentioned paper is filed herewith, marked "Exhibit S. H Turner's Will.")

Mr. Johnson: We offer in evidence a letter of September 21st, 1898, from Carlisle & Johnson as counsel for complainants to the defendants; letter of September 26th, 1898, from J. J. Dar- 411 lington in behalf of the executors; and letter of October 28th, 1898, from J. J. Darlington in behalf of the executors. These letters are offered for the purpose of showing that notice of the claim was given to the executors, and notice of it acknowledged by them, and of the date of such notice and acknowledgment, and of the date when the said claim was rejected by the executors.

Mr. Wilson: I reserve an objection to the materiality and competency of this proof, the writing of the letters being admitted.

"Exhibit Carlisle & Johnson, Nos. 1, 2, 3," see pages 553, 554, 555.

(The three letters last above mentioned are filed herewith, marked respectively "Exhibit Carlisle & Johnson No. 1," "No. 2," and "No. 3.")

(The further taking of these depositions was thereupon adjourned subject to notice.)

412 Washington, D. C., *July* 12, 1901—4 o'clock p. m.

Met pursuant to agreement at the office of Carlisle & Johnson, 344 D St. N. W., Washington, D. C.

Present on behalf of the complainants, Mr. Johnson.

Present on behalf of the defendants, Mr. Nathaniel Wilson.

Mr. Johnson thereupon offered in evidence papers marked and described as follows:

Compl'ts' Ex. A, see page 556.

Complainants' Exhibit A, being a duly certified copy of deed from Harriet Tarkington to Thomas M. Turner.

Compl'ts' Ex. B, see page 561.

Complainants' Exhibit B, being certified copy of deed from Thomas M. Turner to Carrie Heath Turner.

Compl'ts' Ex. C, see page 565.

Complainants' Exhibit C, being certified copy of deed from Carrie Heath Turner by Thomas M. Turner, her attorney, to William M. Phillips.

Compl'ts' Ex. D, see page 569.

Complainants' Exhibit D, being certificate of the clerk of the district court and *ex officio* recorder of Webster parish, State of Louisiana, that no appraisement or inventory of the estate of the complainants was ever made.

Compl'ts' Ex. E, see page 571.

413 Complainants' Exhibit E, being certificate of the same officer to the effect that no such inventory or appraisement of the complainants in this case was ever recorded in the mortgage books of the parish of Webster, State of Louisiana.

Compl'ts' Ex. F, see page 573.

Complainants' Exhibit F, being duly certified copy of deed from Joseph Greer & wife to Thomas M. Turner.

Compl'ts' Ex. G, see page 577.

Complainants' Exhibit G, being certified transcript of the record of forfeiture of block 9, section No. 26, of the school lands of Wilbarger county, under the act of the legislature of Texas of March 25, 1897.

Compl'ts' Ex. H, see page 580.

Complainants' Exhibit H, being certified copy of the record of the reclassification and appraisement of the said block 9, section 26, by the commissioner of the general land office of Texas.

Compl'ts' Ex. I, see page 583.

Complainants' Exhibit I, being duly certified copy of deed from Thomas M. Turner & wife to Frank S. Lockett, dated 27th March 1901, conveying said section 26, block 9, Wilbarger county, Texas.

Compl'ts' Ex. K, see page 587.

Complainants' Exhibit K, being duly certified copy of deed from Thomas M. Turner and wife to R. C. Neal, of the southeast quarter of block 26 in Texas Town Site Company's addition to the town of Vernon, in Wilbarger county, Texas.

414 Mr. WILSON: I note an objection to the introduction of each of said documents in evidence, because each and every one is immaterial and irrelevant to the issues in this case.

Mr. JOHNSON: I also file, as part of the testimony on behalf of complainants, a stipulation between counsel for complainants and counsel for defendants, dated July 12, 1901.

Compl'ts' Ex. L, see page 591.

Said stipulation was marked "Complainants' Ex. L" and is appended hereto.

(Thereupon complainants' counsel announced that the testimony on behalf of the complainants is closed.)

415 DISTRICT OF COLUMBIA, *ss:*

I, John W. Hulse, an examiner in chancery in and for the District of Columbia, do hereby certify that the foregoing depositions were taken down by me in shorthand at the times and places mentioned in the captions thereof from the oral statements of the witnesses; that said witnesses were by me first duly sworn to testify the truth, the whole truth and nothing but the truth touching the matters in controversy; that said depositions were then accurately reduced to typewriting, and subscribed by me in lieu of said witnesses, by consent of counsel, for the respective parties, except as to those signed by the witnesses in my presence.

I further certify that I am not of counsel nor in anywise interested in the result of this cause.

JOHN W. HULSE,
Examiner in Chancery.

5 witnesses.

415½ Court of Appeals of the District of Columbia, —— Term.

JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased, Appellants,
vs.
ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Their Next Friend.
No. —.

Appeal from the supreme court of the District of Columbia.

VOLUME II.

416 *Copies of Complainants' Exhibits.*

Filed March 28, 1902.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL.
vs.
J. J. DARLINGTON and GEORGE W. GRAY, Exr's.
In Equity. No. 20552.

EXHIBIT MISS TURNER No. 1.

Cor. 14th St. & N. Y. avenue N. W.,

WASHINGTON, D. C., *June 7th*, 1895.

Miss Wilmer Turner, Rock Fish Depot, Va.:

Mr. Watson, the agent of the Chesapeake and Ohio railroad, will furnish you a ticket from Charlottesville to St. Louis on your way home, with sleeping birth, free of charge, on your application.

In haste,

P. A. TRACY.

417 (EXHIBIT MISS TURNER NO. 2.)

WASHINGTON, D. C., *Aug.* 7, 1897.

DEAR MISS TURNER: Upon my return to the city I find your letter.

I should most certainly not give up my position as teacher, as $100 a year, with board and lodging is a good salary these hard times.

You could not get any typewriting to do here unless you had a position in some of the Gov. departments, and you know you have to pass a satisfactory civil-service examination and take your chances with many others in order to get such positions.

First-rate stenographers can always do well anywhere.

Yours truly, P. A. TRACY,
N. W. Cor. 14 *& N. Y. Ave.*

418 "EX. MISS TURNER NO. 3."

WASHINGTON, D. C., *May* 29, '95.

DEAR MISS TURNER: Yours rec'd.

I have some friends in the R. M. S. and may possibly be able to get your daughter as far as Saint Louis on her way home without cost to her.

The agent is out of the city now, but will soon return. This would not cover sleeping accommodations; and, tickets would have to be purchased in Saint Louis for Texas.

If you think proper you can send me her name and address and if I succeed in getting a ticket I will mail it to her.

The scalpers do not seem able to do much as the trip is over so many different lines.

Yours truly, &c., PHILIP A. TRACY.

419 EX. MISS TURNER NO. 4.

The Oxford.

WASHINGTON, D. C., *Jan.* 25*th*, 1895.

DEAR MRS. TURNER: I have thought of writing you for some time to say that Erle has failed to pass the civil-service examination, though I presume he has told you all about it. He had all the subjects given him upon which he was to be examined, and had ample time (six months) in which to prepare himself, and then failed. I am very much surprised as I thought he could easily pass. Under the rules now governing the civil service, a clerkship is a fortune to a young man, and I am sorry he failed. He can take another examination in six months, but he made such a poor showing before, I hardly think he will have the courage to try again.

He is now employed in Wanamaker's store in Philadelphia, at a small salary, and I have advised him to remain there, if he can, until times get better. If a man can make a comfortable living these times he is doing well.

I do not see any chance for better times. The Democrats in Congress have shown themselves incompetent to do, anything for the relief of the Treasury and country. People of both parties are now looking to the new Congress, which meets in December next, for relief. The great trouble lies in the fact that nowadays people elect men to Congress who are incompetent to legislate intelligently upon the important questions that come before them. This is true of the Senate as well as of the House.

420 I have been sending Erle some money, and he seems to be in good health, so you need not feel uneasy about him. He shall not suffer.

Hoping you and your family are well, I remain

Yours truly, &c., PHILIP A. TRACY.

421 (Ex. Miss Turner No. 5.)

Washington, D. C., *Aug.* 21, 1894.

Dear Mrs. Turner: I was out of the city and, therefore, did not get your letter until yesterday. I could not comply with your request. There is no money in my hands belonging to the estate of S. H. Turner.

After you and Erle raised a fuss because he had not gotten his share, I became alarmed and consulted a lawyer, and he advised me not to turn over another dollar of the estate money until Mr. Turner qualified for the full amount of the estate. I informed your husband of the fact, and he declined to qualify (the bond would be over $50,000) and he and Erle agreed that I should invest the money so that it might be earning something while in my hands.

I then invested the money in what was then good real-estate paper, but the panic came on last year; the endorser of the notes failed in business, and the land has depreciated in value, so that if it were sold now I do not think it would bring half the amount of the notes. I have over $1,400 of my money in the same land. If times should ever get good again (which I doubt) the land would be ample security for the notes. I have let Erle have some $600 of my funds since I invested the estate money, but I cannot see my way clear to increase the amount in such times as these. I was surprised at his coming North, without money, in such times as these. He and his father knew the condition of the estate money, and I had twice advised him not to come until times got better. He told me he had 422 over $2,000 loaned out in Vernon, and that after July he would have money.

Yours truly, &c., PHILIP A. TRACY.

The panic here has been the worst ever known and I see no hope for a change. The agitation of the silver question will cause times to be still harder in my opinion, and wheat and other products lower.

Ex. Miss Turner No. 5–A.

Mrs. T. M. Turner,
Vernon,
Texas.

(Post-mark :) Washington, D. C., Aug. 21, 7 p. m., 1894.

423 Ex. Erle H. Turner No. 1.

The Oxford, 14th street and New York Ave. N. W.

Washington, D. C., *Nov. 20th,* 1893.

Dear Erle: Your two letters at hand.. I cannot send you any more money yet. The ground upon which I loaned the estate money and some of mine would not, I fear, bring enough to get us out clear, if sold now, and so I will have to wait for better times, which I am afraid will be slow in coming. The panic here has been the worst ever known, and is still on. I look for a still further decline in real-estate values.

You should not place yourself in position to be caught in such straits. It would not be possible to get you any employment here or anywhere else in this country now, as the panic is general.

I would advise you to stay right where you are, and work like a Turk. One of these days this panic will be over, and times will be better.

Yours truly, PHILIP A. TRACY.

424 Ex. Erle H. Turner No. 2.

The Oxford, 14th street and New York avenue N. W.

Washington, D. C., *Mar.* 16, 1894.

Dear Erle: I rec'd your letter and had another application sent to you by the commission. I hope you will study hard and get through all right. They said there would be an examination in Trenton, N. J., in April or May, I forget which. The circular enclosed with the application will show.

It would be a good thing if you could get into some kind of business there if you only get enough to pay your board, as if you pass the examination you will have to wait for a vacancy. I will try and let you have some money before long. I am trying to sell the ground upon which the estate's money and $1,400 of mine is loaned, but I can find no one that seems to want it though they say it is good for the loan. I do not think it is good for the loan now, but this time last year it was first-class. It is difficult to sell anything in the shape of real estate here now.

Yours truly, &c., PHILIP A. TRACY.

425 EXHIBIT ERLE H. TURNER No. 3.

The Oxford, 14th street and New York Ave. N. W.

WASHINGTON, D. C., *May* 8, 1894.

DEAR ERLE: Yours at hand. I am sorry for you, but you never should have come East without money in such times as these.

I have no money in hand belonging to the estate though I have been trying my best to collect the interest on the notes.

I sent you $20 in a letter March 22, which I suppose you rec'd.

Perhaps Mr. Cockrell would let you have some money if you would write him. You are one of his constitu*t*ents. I had all the money belonging to the estate in hand and was ready to turn it over to your father, but, you remember, you and your mother raised a racket. I consulted a lawyer, and he advised me to hold back. The money was then invested and you have drawn the interest as long as it was paid up to the time the panic came on. Since then I have not been able to collect anything.

Yours truly, &c., PHILIP A. TRACY.

426 EXHIBIT ERLE H. TURNER No. 4.

The Ebbitt house, H. C. Burch, manager, 623 13th — N. W.

WASHINGTON, D. C., *Feb.* 24, 1897.

DEAR ERLE: Both of your notes rec'd. I hope you are still trying to get employment with some show of ultimate success. I should think you might find a small place somewhere, even if the*y* pay is insignificant. Take anything you find, for the present, is my advice.

I enclose money order for thirty dollars, for which please receipt, and at the same time write me of your prospects.

Business will improve soon after McKinley's administration gets under way.

Yours truly, &c., PHILIP A. TRACY.

427 EX. ERLE H. TURNER No. 5.

"Riggs house."

WASHINGTON, D. C., *June* 24, 1897.

DEAR ERLE: Yours rec'd.

From what you say you are doing fairly well for a beginning, and ought to feel good over it. I do not see why you should worry yourself into a spell of sickness because other young men are doing better than you are. That is all wrong, and I think you are much too sensible to indulge in it. I would under all circumstances take care of my health. I do not see how driving around would injure your health, but worrying will most certainly bring you down to a sick bed. I see laundry people driving around here, and it does not seem to be very hard work, or disagreeable.

If you feel an interest in your work it will do you good but if you dislike it and worry over it it will go hard with you. My advice is eat plenty of good, plain, nourishing food, take an interest in your business and stop fretting and worrying. Under no circumstances must you do anything to make yourself sick.

Spend the money I sent you judiciously and keep up your health. In a month or so you may get a more satisfactory place.

I will try and see you by July 15, or perhaps sooner, I am unwell and the rheumatism troubles me greatly.

Yours truly, PHILIP A. T.

Stop worrying.

428 (EX. ERLE H. TURNER No. 6.)

WASHINGTON, D. C., WORMLEY'S, *Aug.* 13, '97.

DEAR ERLE: I came from the seashore much sooner than I intended to on account of the cold, rainy weather which made my rheumatism much worse. I am temporarily staying at this hotel, boarding-house and the weather is pleasant. Later I expect to go over into Virginia for a while as I like to be in the country in fruit time.

I intended to stop over in Phila. and see you, but before I got there I changed my mind as I was feeling badly and thought you could write me anything you had to say. I have been here some time.

If nothing happens I shall be in your city some time in October and will see you then. In the meantime try and take care of yourself, take your meals regularly and stop worrying. That will do more to give you health and strength than anything else. On my return home I found a letter from your sister. She has a good place at Schuyler, Va., but was thinking of coming here to do typewriting, in which she has become an expert, it seems. I advised her to stay in Va., as she could not get typewriting to do here unless she could pass the examination, and get a place in one of the departments, which I have all along been advising her to do.

I think she could pass a good examination, but she seems to think otherwise.

429 She is getting $100 a year with board and room, which I think is doing well for these times.

But the McKinley boom is coming, wheat is going up all the time and will soon be $1.00 a bushel, and we will have good times again.

I will be at this place a week or ten days longer, and if you write address me here.

Yours truly, PHILIP A. TRACY, *Wormley's.*

I hope you will act upon my advice.

430 EXHIBIT ERLE H. TURNER No. 7.

"Riggs house."

WASHINGTON, D. C., *Jan'y* 29, 1898.

DEAR ERLE: As I heard this morning you had been in the hospital I thought I would write to inquire if you have been very ill and what was the trouble. I could spare you some money if you are in trouble and needy. From your last letter I had reason to suppose you were doing well.

You should wear heavy clothing, eat plenty of good strong food, and not expose yourself.

I am still troubled with pains.

Answer at once.

Yours truly, &c., PHILIP A. TRACY.

Address me here and I will get it.

431 EXHIBIT ERLE H. TURNER No. 8.

"Riggs house, O. G. Staples, proprietor.

WASHINGTON, D. C., 2/24, 1898.

Opposite U. S. Treasury, one block from the White House.

DEAR ERLE: I am waiting impatiently for your letter (promised) with a full explanation, and that receipt for the $80 sent you. I have such a hard time getting receipts from you that in future, if I send you any more money, I shall require you to send me a receipt for it in advance, it is so important for me to have them. I have not heard any more from the woman, and suppose you have seen her and made satisfactory arrangements with her. She says she boarded you without charge, which, if true, was very kind indeed. I hope you are doing well, and would like to know how much you are making. It seems to me you ought to be in shape by this time to paddle your own canoe, without aid from me or any one else.

I have not taken any action with the ground yet. You have had about $1,400 in cash, and don't you think you ought to (next four lines illegible).

I hope you are well.

Please write soon.

Yours truly, &c., PHILIP A. TRACY."

432 Exhibit Erle H. Turner No. 9.

"Riggs house," O. G. Staples, proprietor.

Washington, D. C., *Feb.* 8, 1898.

Opposite U. S. Treasury, one block from the White House.

Dear Erle: Yours rec'd.

I am glad to hear you have gotten over your illness. I enclose express order for $50. This with the $30 sent you some time ago is $80 for which you will please send me a receipt at once.

There is a (the rest torn; and illegible.)

433 Exhibit Erle H. Turner No. 10.

The Riggs house.

Washington, D. C., *Feb.* 11, 1898.

Dear Erle: Yours rec'd. I have no money in hand belonging to you or the estate. It is all in the ground. I have not written the woman in reply to her last letter. She could not attach as everything is in my name. So do not worry as there is no danger.

I am thinking transferring the whole thing over to the heirs and sending the deed to your mother. Then you can all manage it to suit.

434 Exhibit Erle H. Turner No. 11.

623 13th — N. W., Washington, D. C.

Dear Erle: Please write me how you are getting along. You are old enough to have correct ideas about business, and I hope you made no mistake in embarking in the laundry business. Many people are making money out of it, and I hope you will succeed. I am unwell from rheumatism, and this cool weather is hard on me.

Business is still dull, and our people are waiting for the promised McKinley boom. If it fails to come farewell to the Republican party.

Yours truly, PHILIP A. TRACY.

435 Exhibit Erle H. Turner No. 12.

It is not necessary for you to see me as I fully understand all about the matter. Write me all about it and send the receipt for the $80.

In haste,

P. A. T.

436 EXHIBIT ERLE H. TURNER No. 13.

This indenture made this twenty-seventh day of April in the year of our Lord one thousand eight hundred and ninety-eight, by and between Philip A. Tracy, party of the first part, and Erle H. Turner, party of the second part:

Witnesseth, that the party of the first part, for and in consideration of — dollars, lawful money of the United States of America, to him in hand paid by the party of the second part, receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, has given granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and does by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the party of the second part, his heirs and assigns forever, one undivided half part of the estate right title interest claim and demand legal and equitable of him the said party of the first part in and to all that parcel of land in the city of Washington in the District of Columbia known and designated as and being all of square numbered six hundred and forty-nine (649), and in and to the proceeds of any sale or sales of said square or any part thereof made by William E. Edmonston and William Mayse or the survivor of them as trustees or trustee under the certain deed in trust to them from John D. Coughlan recorded in Liber No. 2021, folio 20, *et seq.*, of the land records of the District of Columbia,—subject however 437 to the payment by said party of the second part his heirs and assigns of one-half of all assessments hereafter levied by said trustees in respect to my interest and estate in said square under the said deed in trust.

438 In testimony whereof, the party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

PHILIP A. TRACY. [SEAL.]

Signed, sealed and delivered in the presence of—

A. FROST.
R. G. BURKE.

DISTRICT OF COLUMBIA, *To wit:*

I, —— —— a notary public in and for the said District of Columbia, do hereby certify that Philip A. Tracy, party to a certain deed bearing date on the twenty-seventh day of April, A. D., 1898, and hereunto annexed, personally appeared before me, in the said District, the said Philip A. Tracy being personally well known to me as the person who executed the said deed; and acknowledged the same to be his act and deed;

439 Given under my hand and official seal, this eleventh day of May, A. D. 1898.

[Seal of L. M. Fox, Notary Public, District of Columbia.]

L. M. FOX,
Notary Public.

Endorsed: Deed in fee. —— —— to —— —— Received for record on the — day of ——, A. D. 189–, at — o'clock — m., and recorded in Liber No. — at folio — one of the land records for the District of Columbia, and examined by —— —— recorder.

440 EXHIBIT ERLE H. TURNER No. 14.

Wm. E. Edmonston, attorney-at-law, Cor. 5th & E Sts. N. W.

WASHINGTON, D. C., *April* 27, '98.

DEAR SIR: I enclose draft of deed for one-half of your interest in square 649 to Erle H. Turner. I find upon examination of the deed in trust to Mr. Mayse and myself and of the printed declarations of trust that provision in them is made only for the case of an assignment of the whole interest of the several owners. If the enclosed deed is executed and recorded and notice thereof in writing filed with me the rights of Mr. Turner will be protected in case of a sale by Mr. Mayse and myself. If you will send your old certificate or declaration I will — you the new certificate or declaration and you can also endorse on this the fact of assignment of the half interest.

Very truly, W. E. EDMONSTON.

To Philip A. Tracy, Esqr.

441 (EXHIBIT ERLE H. TURNER No. 15.)

Hotel Oxford, 14th St. & New York Ave. N. W., Washington, D. C.

ERLE H. TURNER, Esq.,
Vernon,
Texas.

Postmark on front:

Washington,
Nov. 20,
2 p. m.
1893.

Postmark on back:

Vernon.
4 p. m.

(The rest of the portmark is illegible.)

442 EXHIBIT ERLE H. TURNER No. 16.

Riggs house, Washington, D. C. (Stamp.)

Collect'n & dist'n.
Wash'n D. C.
Jan. 29.
Trip 7.
Wagon No. 1.

E. H. TURNER,
38 *North Broad St.,*
Philadelphia,
Pa.

Postmark on back:

Philadelphia, Pa.
An. 30
5 — m.
1898.

Phila., Pa.,
Jan. 30,
7.30 a. (remainder of stamp torn off.)

443 EXHIBIT ERLE H. TURNER No. 17.

Riggs house, Washington, D. C. (Stamp.)

Collect'n & dist'n.
Wash'n, D. C.
Feb. 25.
Trip 2.
Wagon (illegible).

E. H. TURNER,
38 *North Broad St.,*
Philadelphia,
Pa.

(In lead pencil:) 230.

Postmark on back:

(Illegible) Pa.
Feb. 25,
(Illegible.)

444 EXHIBIT ERLE H. TURNER No. 18.

Riggs house, Washington, D. C. (Stamp.)

Washington, D. C.,
Mar. 13, 7 p. m., '98.

E. H. TURNER,
38 *N. Broad St.*,
Philadelphia,
Pa.

(In lead pencil:) 230.

Postmarked on back:

Philadelphia, Pa.
Mar. 14,
1.30 a. m. Received.
1898.

Philadelphia, Pa. (illegible).
Mar. 14,
5.30 a. m.
9 (illegible)
S (illegible).

445 EXHIBIT ERLE H. TURNER No. 19.

Hotel Oxford, 14th St. & New York —, two blocks from th-.
European & American pl.
(Illegible.)

E. H. TURNER,
Ver (illegible).

Postmark on back of envelope:

(Two lines illegible)
14
4 p. m.
1894
Tex.

446 EXHIBIT ERLE H. TURNER No. 20.

WASHINGTON, D. C., *April* 30'', 1888.

I hereby give and bequeath to the four children of my brother, Thomas M. Turner, of Minden Louisiana, all property, real and personal owned by me, or in which I have any interest at the time of my death and appoint Philip A. Tracy to distribute the proceeds of the said property equally between them.

(Signed) S. H. TURNER.

Witness-:

PHILIP A. TRACY.
GEO. F. FENTON.

Is on record at Warrenton, Va.

447 Exhibit Erle H. Turner No. 21.

A jacket or envelope endorsed:
Notes belonging to S. H. Turner, 1888.

448 Exhibit Erle H. Turner No. 22.

S. H. Turner.

Nov.	18, '82.	[W. Z. Partello]* *Paid*	0,000.00
"	1, '79.	Susan W. McNamee	1,700
Jan'y	19, '81.	Edwin F. Jones	1,000
April	7, '75.	J. H. Hollidge	800
Mar.	22, '84.	John B. Taylor	1,000
"	" "	" " "	1,000
July	12, '81.	Flora V. Andrews (2)	1,000
June	6, '85.	Jennie J. West	3,400
April	3, '85.	Caroline Isdell (2)	1,335.20
Dec.	15, "	Eliz. V. Lee	600
"	" "	" " "	600
Jan'y	8, '86.	Mary J. Lewis (3)	1,200
Dec.	30, '85.	John L. Carusi..	1,350
May	19, '86.	Julius Rehwold (4)	2,200
Dec.	24, '85.	Rufus A. Morrison	1,500
Oct.	30, '86.	John B. Avery (4)	800
"	2, "	Thomas R. Benton (15)	1,800
June	1, "	G. H. La Fetra	1,036.90
April	18, '87.	L. A. Grant	300
Aug.	20, '85.	D. B. Groff	1,500
		(Footing in lead pencil)	24,122.10

449 *Second Sheet.*

1888.		Am't for'd (in lead pencil)	24,122.10
Feb.	18.	C. W. Baldwin	2,500
Jan'y	27.	A. H. Nixon (3)	1,350
Mar.	12.	D. B. Groff	1,000
		(Footing in lead pencil)	$28,972.10

This list was given by Mr. Tracy as a list of the property of S. H. Turner, in his hands.

[* Erased in copy.]

450 EXHIBIT E. H. T. CROSS-EX. No. 1.

VERNON, TEXAS, *September 6th*, 1893.

Received of P. A. Tracy, at sundry times, the sum of five hundred and fifty dollars ($550) on account of money in his hands belonging to the estate of the late S. H. Turner, deceased.

ERLE H. TURNER.

Endorsed on back:
" Receipt from Erle H. Turner for moneys sent him. T."

EXHIBIT E. H. TURNER CROSS-EX. No. 2.

$65. Received of P. A. Tracy sixty-five dollars on estate of H. S. Turner.

ERLE H. TURNER.

Oct. 18th, 1894.

451 EXHIBIT E. H. TURNER CROSS-EX. No. 3.

$30. Rec'd of P. A. Tracy thirty dollars ($30) on estate of H. S. Turner.

ERLE H. TURNER.

Nov. 5th, 1894.

EXHIBIT E. H. TURNER CROSS-EX. No. 4.

$30. Rec'd of P. A. Tracy, thirty dollars on estate of H. S. Turner.

ERLE H. TURNER.

December 11th, 1894.

EXHIBIT E. H. TURNER CROSS-EX. No. 5.

Rec'd of P. A. Tracy fifty dollars, on estate of H. S. Turner.

ERLE H. TURNER.

M'ch 29th 1895.

452 EXHIBIT E. H. TURNER CROSS-EX. No. 6.

275. Rec'd of Mr. P. A. Tracy two hundred and seventy-five dollars of the estate of S. H. Turner.

ERLE H. TURNER.

July 25th, '95.

EXHIBIT E. H. TURNER CROSS-EX. No. 7.

$125. Rec'd Philadelphia Jan. 21st 1897, of Mr. P. A. Tracy one hundred & twenty-five dollars, from estate of H. S. Turner.

ERLE H. TURNER.

EXHIBIT E. H. TURNER CROSS-EX. No. 8.

$80. Received, Phila. Pa. February 26, '97 eighty dollars, from P. A. Tracy of estate of S. H. Turner.

ERLE H. TURNER.

453 EXHIBIT E. H. TURNER CROSS-EX, No. 9.

PHILADELPHIA, PA., *May* 17, '97.

Rec'd of Philip A. Tracy the sum of one hundred and thirty dollars on account of estate of S. H. Turner, deceased.

ERLE H. TURNER.

Endorsed on back at each end: "Turner."

EXHIBIT E. H. TURNER CROSS-EX. No. 10.

C 89882
Adams Express Co.
Money order
Remitter's receipt
Keep it
Amount of order
$30.00.
Nov. 30, 1897 sent to
E. H. Turner
By P. A. Tracy.

454 EXHIBIT E. H. T. CROSS-EX. No. 11.

DEAR MR. TRACY: Yours just rec'd. I am very sorry I have annoyed you by my delay in sending a receipt. The fact is for 2 weeks I have been sick not able to work, but I would not give up and worked all the time so when I would get home at night I was too worn out to write. I think I am O. K. now only a very bad cold and fever. I do hope the bad weather is past. I am tired of it, though I stood the winter much better than I expected. I wish I could persuade you to go to Hot Springs, Ark. I know they would cure you there.

About the property. I wish you would just let it rest as it is for the present. Now about letting the others have it. I think they have all had more than I have and are getting the use of it now.

When papa made an assignment he put all the property in Wilmer, Lunette's and Ashby's name-. Did not mention me not even for the $1300 that I had loaned him. I have his order for this am't in your hands. This is all I will ever get, as I would not make any fuss about the Vernon property, so you see I much prefer you keep the property just as it is. You are safe in what I receipt you for, and I think it no more tha*t* right that I should have this as they have all the rest and are having the benefit of it now—at any rate do not take any step for the present.

You spoke of the woman here. I have not seen her and do not care to. I wrote you what she was. I do not owe her a cent. Do not let her know that I have any property or interest in any
455 there. I gave her a judgment note to protect her. My sympathy was worked on and I thought she was a good woman, being imposed on—about the board—that is a lie—she got paid for it all and more too. I will write you more fully in regard to this when I have more time. If she write you any more, just say that you have no more money of mine, and that she will have to look to me for settlement, that you do not wish to be bothered about it.

Take my advice and go to Hot Springs. It would build you up and make you feel like a new man—the cost w'd not be very much and you can well afford the trip. You know the longer you put it off the harder it will be to cure.

I am making $10 per week—which I know is very little but I know some who are not doing that. I wish times w'd improve. Are we going to have war? What do you think of the Main-, what are we to do to Spain?

I hope to hear that you have made up your mind to go to Hot Springs in your next letter.

Yours, &c., E. H. TURNER.

456 EXHIBIT E. H. T. CROSS-EX. NO. 11–D.

Postmark : (Stamp.)

Phila.
Feb. 28
10 a. m.
Sta. C.

Mr. P. A. TRACY,
c/o Riggs House,
Washington, D. C.

(In lead pencil : 275.)
Postmark on back :

Washington, D. C.
Feb. 28
5 a. m.
1898.

457 **Exhibit E. H. T. Cross-ex. No. 12.**

M'ch 9th.

Dear Mr. Tracy: Your letter just rec'd. I am indeed sorry if these parties have annoyed you in any way. I went to see a friend of mine tonight who is a lawyer. He laughed at the idea of them getting anything out of me. He says all you will have to do will be to write and say that you have no money in your hands of mine, or that you have sent me all that was due me, and I have nothing more there, or that you some time ago made a settlement with me in full. Anything on this order, so you give him to understand that you have no money or property of mine.

There is no doubt about her collecting the note if she could get anything in my name. I gave the judgment note and I could not go to court and say it was not right. If I did I would get myself in trouble. If I go to this lawyer and deny the claim it will make her very mad with me and I do not want her ill will any more than I can help. One thing she is mad because I went away from her and that I will have nothing more to do with her. If she find out that I have no more money then, that will end it, and she would not be my enemy. Mr. Tracy you know we all makes mistakes in life this was one of mine and I am heartily sorry for it. I cannot explain the matter to you fully until I see you but when I do I will make it all very plain. There are some things which I cannot write. In any letter you write do not say that I deny the claim for as I say that would incur her ill will and I do not wish to do that for she is a bad woman and might cause me some embarrassment. 458 As it is, if she finds out I have no money she would drop the thing and that would end it. The easiest way is always best. Do not acknowledge that you have anything of mine. Say you have sent me all that was due me. She has no money to go to court or bring suit with. Called to see her tonight, not a word was said about all this. I just made a friendly call. I did not tell her that I knew what she had done. I do not want, or I w'd rather not have her mad with me, for as I say I think this is the best way out. She was very pleasant and glad to see me. There is some spite work in this. She is mad because I have dropped her, so I thought if I dropped in to pay a little visit it might be well. This will teach me a lesson and one that I'll not soon forget. I think it will all blow over when you say that you have nothing in your hands for me. Let me know if anything new develops. When you understand it all you will not blame me for the way I feel.

I am doing very nicely. This is fine weather. I do hope winter is over. I am working very hard and feel much better for it.

Let me hear from you soon. I hope you are feeling better. I am in hope this is the last of winter. I think I will get a day each week during July and Aug. This will be very nice. I did not ask them at the office for it but was told if I could handle my work in the 5 days I could do it, and I think I can.

Will write again soon.

Yours, &c., E. H. TURNER.

459 (EXHIBIT E. H. T. No. 12-G.)

Postmark: (Illegible)

Mar. 9
10 a. m.
Sta. C.

(Stamp.)

Mr. P. A. TRACY,
c/o Riggs House,
Washington, D. C.

Postmark on back:

Washington, D. C.
Mar. 10, 2
4-p. m.
1898.

460 (EXHIBIT E. H. T. CROSS-EX. No. 13-A.)

FRIDAY P. M.

DEAR MR. TRACY: Yours just rec'd. From the tone of your letter you must have misconstrued something I wrote. I am perfectly satisfied for you to do anything you think best. I do not understand what you mean by "having the lots transferred me and then back to you" but anything you think best I am perfectly willing to do only get the stuff where she cannot get hold of it. I want her to think I have nothing. Then she will drop the matter. That was why I made the suggestion that you just write Rutherford and say that I had nothing more in your hands, he w'd then confer with her and I think she would drop the matter.

You say I must not expect you to write anything about the woman that is not true. I do not want you to. You need say nothing about her at all. You are not supposed to know and I would not want you to write anything that I have written you. I thought you might say to Rutherford that you had nothing more of mine. I think it is very likely that she saw Rutherford yesterday and told him to drop the matter, so you might wait and see if he writes you again and then just write him that you have nothing more due me. I think will settle the matter as long as I am friendly with her, which I think best to be for the present. In the meantime I want you to go right ahead and have the transfers made you speak of. Just do what you think best. I will be perfectly satisfied and very grateful to you. I know this has worried — for which I am
461 very sorry. I get so worried myself that I cannot sleep.
I am going to get a pass next week and if I can do so I will

run over Sunday. I can more fully explain the matter. I am going to give the woman a little money each week. I think this will keep her from pushing the matter for the present and after you get the thing fixed where she cannot get anything, then I shall drop her altogether. It was unfortunate for me that I ever met her, but it will serve me as a good lesson. Now please go ahead and do anything you think best. I am perfectly satisfied. Let me know as soon as Rutherford writes you again. I am inclined to think she will let the matter drop, but it is best to be on the safe side.

Yours & etc., E. H. TURNER.

EXHIBIT E. H. T. CROSS-EX. NO. 13-D.

Postmark:

Philadelphia
Mar. 26
Trip 38
1898
Pa.

Philadelphia
& Manayunk
R. P. O.

(Stamp.)

Mr. P. A. TRACY,
c/o Riggs House,
Washington, D. C.

(In lead pencil:) 275.

Postmark on back:

Washington, D. C.
Mar. 26.
9 m.
1898.

2

462 EXHIBIT E. H. T. CROSS-EX. NO. 14-A.

SUNDAY.

MY DEAR MR. TRACY: Yours just rec'd. You ask me what you shall do: If you have any lots in my name have them transferred to yourself at once. You know better than I do what to do—just fix things so if she does bring suit, that she can't get anything. I do not think she will push the matter. I can't tell as yet. She has no money not a cent. As I wrote you there is some spite work in this. I have dropped her and this has made her mad. I have called on her several times the last few week- & she is *very nice* to me have not said anything yet, but will shortly. I know she *likes me* & I used to be very attentive until I found out some things about her, then I quit calling & *this* & her need for money has caused the trouble, so I thought it best to leave my feelings out of the question & get on very friendly terms with her. The reason I did not want to dispute the claim

was that I would have to tell her that she stole the money & I cannot prove this & I do not want to make a fuss. She is all right as long as she thinks I have no money—she would do anything for me. I w'd much prefer to drop her altogether but this w'd make her mad. Now suppose you write & tell this lawyer that you have sent me all due me & that you hold my receipt in full. Won't this settle the matter? He will confer with her as soon as he hears from you, & if she is very friendly with me, she will likely
463 drop the matter. I am pretty sure as long as I am friendly with her she w'd not push this matter. But in the meantime get this stuff in your name in some way that she cannot touch it, to be on the safe side. Can you not cover it with a mortgage, or if she does sue, will not my receipt to you clear the things? You know best, only put it where she cannot get it if the worst comes. If you had $100 in your hands for me, & you p'd it to me today & she sued you tomorrow, wouldn't my receipt clear you? You write this lawyer a short note just say you have nothing more of mine & that the lady had better see me that you are satisfied if I owe it I will pay it then I will mention the matter to her about the time she has seen the lawyer & say that you have just written me & that you are angry with me, & I think I can persuade her to drop it for the present. She has evidently gone to my room & read all my letters, (some time back I mean) for she knows things that I never told her.

If you should write home please do not mention this—it is my first scrape with a woman & I promise you it shall be my last. I hope now that spring is coming you are feeling better. I am truly glad the winter is past. It was right hard on me but I got through much better — I expected. I am out of debt & have $25.00 saved in the bank. Write this lawyer & we will see what that will do. You take any step you like. I w'd much prefer this to remain in your hands if possible but fix it where she cannot get at it. If she does drop the matter, I am going to get her to cancel
464 the note. If I can get her to drop it & I think I can fix it shortly, I will persuade her to cancel it.

Let me hear from — soon.

Yours resp.,

ERLE.

Exhibit E. H. T. Cross-ex. No. 14-G.

Mr. P. A. Tracy,
c/o Riggs House,
Washington, D. C.

Postmark:

Mar. 21
10 a. m.

(The rest of the postmark is illegible.)

465 EXHIBIT E. H. T. CROSS-EX. No. 15–A.

PHILA., *April 4th.*

DEAR MR. TRACY: Yours rec'd. I wrote you a hurried note to tell you that I w'd send the receipt 7 a. m. tomorrow per instructions. I have not been well. I am sorry you seem to doubt my word in regard to this matter. I feel that she has gotten a great deal more out of me than I have ever owed her and I shall make the matter very plain to you when I see you. I did not mean that you should tell what was not just true. A friend of mine told me that as you had paid me more than ¼ of the balance left in your hands this should clear you, as the balance would go to the other children, so I just made the suggestion. I did not want you to act on it if it was not entirely satisfactory. You do whatever you can to save me in this matter. Anything you do will be satisfactory to me only do not let her get hold of anything. Do anything with it to avoid that. I will be glad when this is over. I do not like to worry you with this but if I get out of this it will be a good lesson to me. I shall not get into any more.

Yours, & etc., E. H. TURNER.

P. S.—If you write or wire me hurriedly address for 2 weeks 1820 Susquehanna Ave. I am going to change my room soon but will let you know.

E. H. T.

466 EXHIBIT E. H. T. CROSS-EX. No. 15–C.

Postmark:

Philadelphia, Pa.
Apr. 5.
9–30 a.
18 A 98. 2 (Stamp.)

Mr. P. A. TRACY,
c/o Riggs House,
Washington, D. C.

(In lead pencil:) 275.

467 EXHIBIT ERLE H. TURNER REDIRECT No. 1.

The property was sold last month, and did not sell for enough to pay the first mortgage and I could not afford to buy it in to save myself. I have been trying to get your sister to take the examination for a place in the departmental service, but do not know whether she has done so or not. I wish you would send me a receipt for $125, as you know it is very important for me to have receipts for the money I send you.

Yours truly, &c., PHILIP A. TRACY.

Over.

I am rooming now at 623 13th St., N. W., and taking my meals and living cheap.

The date of this can be gotten by an inquiry at above address.

468

Exhibit T. M. T. No. 1.

S. H. T.

John B. Taylor	(2)	2,000.
Julius Rehwold	(4)	2,200.
Louisa A. Grant		300.
Diller B. Groff		1,500.
" "		1,000.
Mrs. E. V. Lee	(2)	1,200.
Roth & Moore		325.
Edwin F. Jones		1,000.
Charles W. Baldwin		2,500.
Alban H. Nixon	(3)	1,350.
Flora V. Andrews	(2)	1,000.
John B. Avery	(3)	600.
Thos. H. Benton	(17)	2,040.
Frank W. Paige		3,000.
J. L. Burns	(3)	1,387.50
E. V. Jarvis		200.
C. A. McEwen	(2)	1,200.
Md. Ave. lots		1,800.
Cash T. M. T		439.25
" "		33.
" "		304.64
(In'st due)		600.
Estate		$25,979.39

Nov. 30, '88.

Endorsed: T. M. Turner. (Copy.) List of notes left at L. Johnson & Co. bank, Nov. 30, '88.

469 EXHIBIT T. M. T. No. 2.

Full List of Notes and Cash in the Hands of Philip A. Tracy, Belonging to S. H. Turner, Deceased, Nov. 30, '88.

Date of notes.			
Mar. 22, '84.	Two	notes of John B. Taylor for $1,000 each	$2,000.00
May 19, '86.	Two	" " Julius Rehwold for $300 each	600.
"	Two	" " Julius Rehwold for $800 each	1,600.
April 18, '87.	One	" " Louisa A. Grant	300.
March 12, '86.	One	" " Diller B. Groff	1,500.
" 12. "	One	" " " " "	1,000.
Dec. 15, '85.	Two	" " Eliz. V. Lee, $600 each	1,200.
June 13, '88.	One	" " Roth & Moore	325.
Jan'y 19, '81.	One	" " Edwin F. Jones	1,000.
Feb. 18, '88.	One	" " Charles W. Baldwin	2,500.
Jan'y 27, "	Three	" " Alban H. Nixon, $450 each	1,350.
July 12, '81.	Two	" " Flora V. Andrews, $500 each	1,000.
Oct. 30, '86.	Three	" " John B. Avery, $200 each	600.
" 22, "	Seventeen	" " Thos. H. Benton, $120 each	2,040.
Aug. 25, '88.	One	" " Frank W. Paige	3,000.
Oct. 17, "	Three	" " J. L. Burns, $462.50 each	1,387.50
Nov. 6, "	One	" " E. V. Jarvis	200.
Nov. 19, "	Two	C. S. McEwen ($600 each)	1,200.
	"	lots on Md. Ave. N. E.	1,800.
Sep. 28,		Cash, T. M. T.	439.25
Nov. 30,		" " in full	337.64
(In lead pencil) (In'st now due) (in lead pencil)			600.

522
25,379.39 (in lead pencil).

470 EXHIBIT T. M. T. No. 2.

(Continued.)

Nov. 30, '88. Received the above-described notes and cash in full under the will of S. H. Turner, deceased.

T. M. TURNER,
Natural Tutor and Agent for My Minor Children.

(In pencil:) Notes all placed in Second national bank by T. M. Turner.

(In pencil:)

25,979.39
840.

26,819.19

Endorsement: (In pencil) List for receipt No. 2. T. M. Turners' receipt for notes belonging to S. H. Turner dec'd. Keep this.

471 EXHIBIT T. M. T. No. 2–A.

National Metropolitan Fire Insurance Co., D. C.

916 and 918 Penna. Ave. N. W., south side.

Edward Clark, president.
Sam. Cross, secretary.

Estate of S. H. Turner.

EXHIBIT T. M. T. No. 3:

"Copy."

I hereby certify that I have invested three thousand six hundred dollars ($3600.00) in ground on Maryland avenue between 9th & 10th streets N. E., at thirty-five cents per square foot, and that Silas H. Turner is entitled to one-half of the proceeds derived from the sale of the same, after deducting the cost of grading, subdividing & examining titles, &c.

(Signed) PHILIP A. TRACY.

472 (EXHIBIT T. M. T. No. 4.)

Hygeia hotel, Old Point Comfort, Virginia.

OCTOBER 10, 1888.

T. M. Turner, Esq.

DEAR SIR: I came down here last Saturday for a few weeks' stay for the benefit of my health, and thought I would advise you of the fact.

I will write you upon my return to Washington.

Yours truly, &c., PHILIP A. TRACY.

473 EXHIBIT T. M. T. No. 4–A.

Hygeia hotel, Old Point Comfort, Va.; H. Phœbus, founder; F. N. Pike, manager. (Stamp.)

T. M. TURNER, Esq.,
Marshall,
Fauquier County,
Va.

Postmark on front:

Fortress Monroe,
Va., Oct. 11,
1888.

Postmark on back

Marshall,
Oct.
1.
(Illegible.)
Va.

474 EXHIBIT T. M. T. No. 5.

WASHINGTON, D. C., *Dec.* 22, '88.

T. M. Turner, Esq.

DEAR SIR: The two notes of Miss Andrews amounting to $1000 and interest were paid the day after you left Washington.

The Lee notes have not yet been paid, but I presume they will be soon.

I hope you and your relatives had a pleasant journey home, and that you found your family well.

It is very cold here now.

Yours truly, &c., PHILIP A. TRACY.

475 EXHIBIT T. M. T. No. 5–*a*.

THOMAS M. TURNER, Esq.,
Minden,
La.

(Stamp torn off.)

Postmark on front:

Washington, D. C.,
Dec. 22,
5 p. m.
'88.

Postmark on back:

Minden, La.
Dec. 26,
9 p. m.
Rec'd.

476 EXHIBIT T. M. T. No. 6.

WASHINGTON, D. C., *Jan'y* 17, '89.

DEAR SIR: The notes of Edwin F. Jones for $1,000, and 6 mo. in'st, and Mrs. L. A. Grant for $300 and 6 mo. in'st, have been paid, & credited to your account.

Respectfully, &c., PHILIP A. TRACY.

T. M. Turner, Esq., Minden, La.

EXHIBIT T. M. T. No. 6–*a*.

THOMAS M. TURNER, Esq.,
Minden,
La.

(Stamp torn off.)

Postmark on front:

Washington, D. C.,
Jan. 17,
8.30 p. m.
'89.

Postmark on back:

Minden, La.
(Illegible.)
p. m. Rec'd.

477 EXHIBIT T. M. T. No. 7.

WASHINGTON, D. C., *Jan'y* 25, '89.

T. M. Turner, Esq.

DEAR SIR: Yours of Jan'y 21 is at hand. I supposed you were not at home or you would have answered my letters. I wish you would write Mr. Swain, cashier Second national bank, that the interest has been paid on all the notes of Thomas H. Benton up to Oct. 2, '88, and tell him that if any one wants to pay a note before it is due to let them do so upon the payment of the in'st up to the date of payment. A party called the other day to pay a note due in 1890 and he declined to accept the money unless the int. was paid up to maturity, a year hence.

The in'st on the Benton notes was paid to me up to Oct. 2, '88, and the amount was included in the $304 I handed you, but somehow or other I seem to have neglected to credit it on the notes, and a letter from you to Mr. Swain will set the matter right. I am glad you are all well.

Great preparations are being made for the inauguration, and it promises to be a grand affair. The hotels are filling up very fast. My sister joins me in kind regards.

Yours truly, &c., PHILIP A. TRACY.

478 EXHIBIT *No.* T. M. T. No. 7–*a*.

THOMAS M. TURNER, Esq.,
Minden,
La.

(Stamp torn off.)

Postmark on front:

Washington, D. C.,
Jan. 25,
6.30 p. m.,
'89.

Postmark on back:

Minden, La.,
Jan. 28.
(Illegible.)
Rec'd.

EXHIBIT T. M. T. No. 8.

WASHINGTON, D. C., *June* 17, '89.

Thomas M. Turner, Esq.

DEAR SIR: One of the $600 notes of Theresa Michaelia left with you as collateral to secure the payment of the $3,000 note of Frank W. Paige, became due, and was paid yesterday.

The amount paid, including 6 mo. int., was $618.

479 Mr. Paige desires $90 of this sum credited on his $3,000 note for the 6 mo. interest which will be due Aug. 25, and the remaining $528, credited as paid on the principal. This will leave $2,472, due on the note, which will be provided for at the time of maturity, Aug. 25/28.

You will please request Mr. Swain, by letter, to make the credits on the note as desired by Mr. Paige.

We have had a great flood here, and the water was so high on the avenue that people came from the depot to the National hotel in boats for a day and a half.

Yours truly, &c., PHILIP A. TRACY.

EXHIBIT T. M. T. No. 8–*a*.

MR. THOMAS M. TURNER,
Minden,
La.

(Stamp torn off.)

Postmark on front:

Washington, D. C.
Jun- 18
12.30 p. m.
'89

Postmark on back:

Minden, La.
Jun.
21
5 p. m.
Rec'd.

480 EXHIBIT T. M. T. No. 9.

WASHINGTON, D. C., *June* 26, '89.

DEAR TURNER: I had 4 notes of J. L. Burns for $462.50 each.

I gave you 3 of these notes & kept one.

These notes were secured by several lots on Prospect hill.

One of these lots has been sold, and the note held by me has been paid.

In order to make a clear title to the lot sold the law requires that there shall be noted across the back of the remaining 3 notes "lot 56 (the one sold) is released."

It will not lessen the value of the security for your 3 notes, as I understand it, as one of the notes has been paid, and I advise you to telegraph Mr. Swain as soon as you can, to note the release of lot 56 on each of the notes referred to.

It is probable that all of these notes will be paid in a month, as all the ground is likely to be sold.

In haste, PHILIP A. TRACY.

481 EXHIBIT T. M. T. No. 10.

WASHINGTON, D. C., *July* 13, '89.

T. M. Turner, Esq.

DEAR SIR: Another lot, No. 57, has been sold.

Please telegraph M. G. Emery, pres. Second national bank, to receive one-half the amount of the three notes of Jesse L. Burns, *i. e.*, one-half of $1387.50 and int. to date and note on the back of the two remaining notes "lot 57 is released."

Resp'y, &c., PHILIP A. TRACY.

Early attention is necessary.

EXHIBIT T. M. T. No. 10–*a*.

T. M. TURNER, Esq.,
Briggs,
Shen. Valley R. R.,
Va.

(Stamp torn off.)

Postmark on front:

Washington, D. C.,
Jul- 13,
3 p. m.,
'89.

(Postmark on back missing.)

482 EXHIBIT T. M. T. No. 11.

WASHINGTON, D. C., *Aug.* 22, '89.

DEAR TURNER: As the $3,000 note of Frank W. Paige will mature in a short time you had better write Mr. Swain to deliver to Mr. Paige the five remaining notes of Teresa Michaelis upon the payment of the balance due on his note $2478, and int. I have not heard from Paige, but presume he intends to pay, or he may want to sell you the 5 collateral notes. I shall tell him you want the money.

I have just returned from Deer Park and Berkeley after an absence of nearly 5 weeks.

I hope you and your family are well.

Yours truly, &c., PHILIP A. TRACY.

Exhibit T. M. T. No. 11–*a*.

Thomas M. Turner, Esq.,
Minden,
La. (Stamp torn off.)

Postmark on front:

Washington, D. C.,
Aug. 22,
5 p. m.
89.

Postmark on back:

Minden, La.,
Aug. 27,
8 p. m.
Rec'd.

483 Exhibit T. M. T. No. 12.

Post-Office Department, office of the First Assistant Postmaster General.

Washington, *Sept.* 27, '89.

T. M. Turner, Esq.

Dear Sir: The balance due you on the Paige note cannot be paid until you telegraph Swain to surrender the Michaelis collateral notes upon the payment of the balance on the Paige note.

I would advise you to do this at once as I was informed this a. m. that the Paige note would soon be paid.

Yours truly, &c., PHILIP A. TRACY.

Exhibit T. M. T. No. 12–*a*.

T. M. Turner, Esq.,
Minden, *La.*

Postmark on front:

Washington
Sep. 26
4.30 p. m.
'89

Postmark on back:

Minden, La.
Sep. 29
8 p. m.
Rec'd. (Stamp torn off.)

484 EXHIBIT T. M. T. No. 13.

WASHINGTON, D. C., *April* 19, '90.

T. M. Turner, Esq., Minden, La.

DEAR SIR: I write to say that the note of C. W. Baldwin, with interest, amounting to $2,525.00, was paid yesterday.

I have not heard from you for a long time, and would like to know where you are; how you are getting along; and what you are investing in; and how much you have made on your money?

I am getting along about as usual, but my sister is not in good health.

Hoping that you are well, I remain,

Yours truly, PHILIP A. TRACY.

EXHIBIT T. M. T. No. 13–*a*.

THOMAS M. TURNER, Esq.,
[*Minden, La.*]*

Vernon, Texas.

Postmarks on front:

Wash (illegible.)
4 (illegible.)
90 (illegible.)

(Illegible.)

Apr. 23, p. m.
—— (illegible.)

Vernon,
Apr. 25, 1890.
Tex.

Postmarks on back.

Minden, La.
Apr. 22,
9 p. m.
Rec'd.

485 EXHIBIT T. M. T. No. 14.

Post-Office Department, office of the First Assistant Postmaster General.

WASHINGTON, *May* 7, '92.

DEAR TURNER: I wrote you some time ago, but have not received any reply to my letter. I was in Phila, a short time ago, and called to see Erle, but was told he had left there, and gone to Balto. The interest on the $2,600, in my hands has not yet been paid though I expect it soon. It is invested in good paper and is drawing 8% *per cent.* though after the present notes are paid I do not think I can get over 6% for it.

[* Erased in copy.]

As I am now all alone in the world and have not much use for much money I have thought something of transferring to Miss Henrietta a part or perhaps all of the commission I charged on your brother's estate (5%) as she was left out in the will, and is poor as I understand it, and getting along in years.

If you will confer with her upon the subject, and ask her to write to me, I think the arrangement can be arranged.

This amount of my charge for attending to the business for 16 years ($120 a year) will stand.

I would like to hear how your wheat turned out? How much did you make and how much did you get for it.

Yours truly, &c., PHILIP A. TRACY.

P. S.—I have not been well since the death of my sister.

T.

486 EXHIBIT T. M. T. No. 15.

2/12/91.

DEAR MRS. TURNER: The whole amount of money and notes turned over to Mr. Turner Nov. 30, '88, was $25,979.39. Of this amount $776.89 was in cash.

The amount now due him in bank is $4,894.66.

I have no way of finding out how many of the notes have been paid, but I am inclined to think very many of them have been paid.

Yours truly, PHILIP A. TRACY.

487 EXHIBIT T. M. T. No. 16.

THE STATE OF TEXAS,
County of Wilbarger.

Know all men by these presents: That we, H. S. Winnins and George M. Winnins of the county of Wilbarger and State of Texas, in consideration of the sum of seven hundred and fifty dollars, to us paid by T. M. Turner as follows, to wit: Five hundred dollars cash in hand paid the receipt whereof is hereby acknowledged and a vendor's lien note for the sum of two hundred and fifty dollars and due six months from date hereof and bearing ten per cent. per annum interest to secure which said note a vendor's lien is hereby retained on the land herein conveyed have granted, sold and conveyed, and by these presents do grant, sell and convey, unto the said T. M. Turner of the county of Wilbarger and State of Texas all that certain tract and parcel of land lying and being in Wilbarger county Texas and known and described as follows: to wit, the southeast one-fourth of block (26) twenty-six, Texas Town Site Company's addition to the town of Vernon in the county of Wilbarger, State of Texas. Beginning at a stake the S. E. corner of said block 26. Thence west with Wilbarger street 290 feet to the S. W. corner. Thence north 290 feet to the N. W. corner. Thence east 290 feet to the N. E. corner. Thence south with the west line of Stephens 290 feet to the place of beginning.

To have and to hold the above-described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said T. M. Turner and his heirs and assigns, forever. 488 And we do hereby bind ourselves and our heirs, executors and administrators to warrant and forever defend, all and singular the said premises unto the said T. M. Turner and his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

The word dollars was interlined in line 10, page 1, before the signing hereof.

Witness our hands at Vernon this 28th day of September, A. D. 1889.

H. S. WINANS.
GEO. M. WINANS.

Signed, sealed and delivered in the presence of—

—— ——.

STATE OF TEXAS,
County of Wilbarger.

Before me, H. C. Thompson, a notary public in and for Wilbarger county, Texas, on this day personally appeared H. S. Winans and George M. Winans, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 7th day of October, A. D. 1889.

[NOTARIAL SEAL.]

H. C. THOMPSON,
Notary Public, Wilbarger Co., Tex.

489 THE STATE OF TEXAS,
County of Wilbarger.

I, L. N. Perkins, clerk of the county court of said county, do hereby certify that the foregoing instrument of writing, dated on the 28th day of Sept. 1889, with its certificate of authentication, was filed for record in my office this 7th day of Oct. A. D. 1889, at 4 o'clock p. m., and duly recorded the 20th day of November, A. D. 1889, at 7 o'clock p. m., in the records of said county, in vol. 13, on page 83.

Witness my hand and seal of county court of said county, at office in Vernon the day and year last above written.

L. N. PERKINS,
Clerk County Court, Wilbarger County.

[SEAL.]

Warranty deed. H. S. and Geo. M. Winans to T. M. Turner Filed, for record on the 7th day of Oct. 1889, at 4 o'clock p. m.
Recording fees $1.00 paid.

490 Ex. T. M. T. No. 16½.

STATE OF TEXAS,
Wilbarger County. }

Know all men by these presents, that whereas, heretofore to wit, the 28th day of September A. D. 1889, we H. S. Winans and G. M. Winans of the county of Wilbarger and State of Texas by a certain deed of that date, recorded on page 93 Book 13 record of deeds for Wilbarger county, Texas, conveyed to T. M. Turner the premises described in said deed, for and in consideration of the sum of seven hundred and fifty dollars, of which amount the sum of two hundred and fifty dollars was evidenced by a certain promissory note of even date with said deed executed by T. M. Turner, to secure the payment of which, the vendor's lien was retained in said deed on said premises.

Now, in consideration of the payment of said promissory note (and at the time of said payment said note is the property of the undersigned) the receipt whereof is hereby acknowledged, we hereby release and cancel the said vendor's lien and confirm to the grantee in said deed and his heirs and assigns the title to the following-described premises, to wit:

The southeast one-fourth (¼) of block No. twenty-six (26) of the Texas Town Site Company's addition to the town of Vernon in Wilbarger county, Texas, the same being the premises described in said above-mentioned deed.

Witness our hands this 26 day of March, A. D. 1890.

H. S. WINANS.
GEO. M. WINANS.

491 THE STATE OF TEXAS,
County of Wilbarger. }

Before me H. C. Thompson a notary public in and for Wilbarger county, Texas, on this day personally appeared H. S. Winans and G. M. Winans, both known to me to ne the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 26th day of March, A. D. 1890.

H. C. THOMPSON,
Notary Public, W. Co., Tex.

[NOTARIAL SEAL.]

THE STATE OF TEXAS, }
County of Wilbarger. }

I, L. N. Perkins, county clerk in and for said county, do hereby certify that the foregoing release of vendor's lien dated the 26th day of March, 1890, with its certificate of authentication, was filed for record in my office the 26th day of March, A. D. 1890, at 11.30 o'clock a. m., and duly recorded the 1 day of April, A. D. 1890, at 8.45 o'clock a. m. in the records of said county, in vol. 116 on page- 413 & 414.

Witness my hand and the seal of the county court of said county at office in Vernon, Texas, the day and year last above written.

[Seal of County Court.]

L. M. PERKINS,
County Clerk, Wilbarger County, Texas,
By Z. HERRINGTON, *Deputy.*

492 EXHIBIT T. M. T. No. 16½.

Endorsed on back: Release vendor's lien. H. S. & G. M. Winans to T. M. Turner. Filed for record March 26th, 1890 at 11.30 o'clock a. m., and recorded April 1, 1890, in Deed Record No. 16, page- 413 & 414. L. M. Perkins, county clerk, Wilbarger Co., Texas, by Z. Herrington, deputy.

Fees $75. Paid.

493 EXHIBIT T. M. T. No. 17.

VERNON, TEX., *Feb.* 17*th*, 1899.

MY DEAR DAUGHTER: In response to your request in letter to your mother I make the following statement:

My brother Silas H. Turner died in Fauquier Co. Va., Friday, Sept. 21st, 1888. I was with him from August 11th, 1888, until he died. During this time he talked freely to me of his business affairs. He told me that Philip A. Tracy had for many years been lending his (my brother's) money at interest in Washington, D. C. where Tracy lived. My brother and Tracy were very good friends. My brother told me that Tracy was not charging him anything for attending to the business. And he showed me a list of notes in Tracy's handwriting, which notes he said Tracy held for him.

This list was marked S. H. Turner and amounted in all to ($28,972.10) twenty-eight thousand nine hundred and seventy-two and $\frac{10}{100}$ dollars which my brother informed me I would have no trouble in getting from Tracy; that he had implicit confidence in Tracy.

This original list I sent to your brother Erle H. Turner some months ago; but I kept a copy of the list, which your mother sent you on the 15th inst.

A few days after the death of my brother, I had his will probated or recorded in Warrenton, Fauquier Co. Va.

On Sept. 28th, 1888, I went to Washington, D. C. to see Philip A. Tracy, and found him at the Gen'l Post-office Department,—494 he being a clerk in that department. Tracy readily acknowledged that he had in his possession belonging to S. H. Turner all the notes named in the list before mentioned, marked S. H. Turner, I at the time exhibiting to him the list and he said the notes were all as good as gold.

Tracy at that time paid over to me ($439.25) four hundred and thirty-nine and 25/100 dollars, which he said was interest money he had on hand.

Tracy then told me he was just on the eve of going off somewhere for a rest of a few weeks and that on his return, he would notify me, and he would have a general settlement of the whole business.

I remained in Va. until his return to Washington. On his return he notified me, and I went to Washington for the settlement.

Tracy then informed me that as my brother owed no debts there was no use to have an administration that he would not qualify as executor of the will, and that I need not delay, to be appointed guardian for my children; that he would turn the notes over to me and I could place them in bank to be collected as they matured.

Tracy then turned over to me the notes specified on a list in his handwriting, now in my possession, a copy of which I send herewith.

This list, the basis of our settlement, specified notes to the amount of	22,802.50
Cash paid me in all	776.89
Interest due on notes	600.00
Md. Ave lots	1,800.00
	25,979.39

495 The $1800 for Md. Ave lots was money invested in some vacant lots on Maryland avenue. This amount I never received from Tracy.

I send a copy of a statement by Tracy in regard to it.

At a subsequent time Tracy told me the lots had been sold, and the amount due my brother from the proceeds was $2750. This he never turned over to me.

All that I ever received from Tracy was as follows:

Amount of notes	22,802.50
Cash paid me in all	776.89
Interest due on notes	600.00
	24,179.39

Now, the list of notes marked S. H. Turner which Tracy acknowledged to me he had in possession amounted to	$28,972.10
Tracy turned over to me in notes	22,802.50
	$6,169.60

The $776.89 was interest collected, leaving a balance of ($6169.60) which he never turned over to me, or to any one else.

My brother just before his death told me that Tracy would not charge anything for what he had done in this matter.

Some years later Tracy in a letter to me stated that he charged one hundred dollars a year for sixteen years, for his attention to the business. This letter I sent to your brother Erle H. Turner, some months ago.

I was never appointed guardian for my children, nor was any one
else. I have several letters from Tracy in regard to the collec-
496 tion of some of the notes, and other matters, which I will send
you when necessary.

I send you a copy of the will. The original is on record in Warrenton, Fauquier Co. Va.

All of my brother's papers were turned over to me.

As ever your papa,

T. M. TURNER.

497 EXHIBIT T. M. T. No. 18.

This deed made this 26th day of August 1890 between Joseph H. Chilcott and Belle his wife of the one part and T. M. Turner of Wilbarger Co. Texas, of the second part. Witnesseth that in consideration of the sum of thirteen hundred and fifty dollars paid and to be paid as hereinafter set forth, the said Joseph H. Chilcott & Belle his wife do hereby grant and convey with covenant of general warranty, unto the said T. M. Turner that lot of land, with a dwelling-house thereon, situated on Cloud street in the town of Front Royal, Va. and bounded as follows, on the east by Cloud St.; south by J. F. Forsyth's lot; west by J. G. Wittshire; north by Jno. H. Thompson, containing one-fourth of an acre more or less. Of the purchase-money the sum of four hundred dollars is paid in cash, the receipt of which is hereby acknowledged; the sum of five hundred dollars to be paid on April 3, 1891, to M. Andrew Haines in satisfaction of a deed of trust on the premises hereby conveyed & the sum of four hundred and fifty dollars to be paid on Dec. 26, 1892, evidenced by bond with interest from date. A lien is hereby reserved on the premises hereby conveyed to secure the deferred payments of purchase-money.

Witness the following signatures and seals:

J. H. CHILCOTT. [SEAL.]
BELLE CHILCOTT. [SEAL.]

STATE OF VIRGINIA, } To wit:
Warren County,

498 I, John W. Peyton, a commissioner in chancery of the circuit court of the county and State aforesaid do certify that Joseph H. Chilcott and Belle Chilcott his wife whose names are signed to the foregoing writing bearing date the 26th day of Aug. 1890 have each acknowledged the same before me in my county and State aforesaid.

Given under my hand this 26th day of Aug. 1890.

JOHN W. PEYTON,
Com'r Ch'y.

WARREN COUNTY, *To wit:*

The foregoing conveyance was received in the clerk's office of Warren county court with the certificate of acknowledgment thereto attached and admitted to record August 27th, 1890.

Teste: C. A. MACATEE, *Clerk.*

Endorsed: 698. J. H. Chilcott and wife to T. M. Turner. Deed. Rec'v'd & admitted to record, Aug. 27th, 1890. Recorded in Deed Book S, page 61.

Tax	$1.40
Clerk's fee	1.25
Paid J. W.	$2.65

499 THE STATE OF TEXAS, }
County of Wilbarger.

Know all men by these presents: That I, T. M. Turner, of the county of Wilbarger, in the State of Texas, for and in consideration of the sum of five dollars paid by A. C. Neal of the county of Wilbarger, in the State of Texas, the receipt of which is hereby acknowledged, have sold, and by these presents do sell, transfer, convey and confirm unto the said A. C. Neal, trustee, and to his successors in this trust, the following-described property, to wit:

The southeast (¼) one-fourth of block No. (26) twenty-six Texas Town Site Company's addition to the town of Vernon; Wilbarger county, Texas, together with all and singular the rights, members, hereditaments and appurtenances to the same in any manner belonging or appertaining.

To have and to hold, all and singular, the property above described unto the said A. C. Neal, his heirs or assigns, forever. And I do by these presents bind my heirs executors and administrators to warrant and forever defend, all and singular, the said property unto the said A. C. Neal, and his heirs or assigns, against the claim or claims of any and all persons whomsoever, claiming or to claim the same, or any part thereof.

This conveyance, however, is intended as a trust, for the better securing of A. C. Neal & Co. of the county of Wilbarger and State aforesaid, in the payment of one certain promissory note made
by me the said T. M. Turner, dated the 26 day of February
500 1894, payable to A. C. Neal & Co., in the sum of seven hun-
dred and sixty-five dollars due six months after date and bearing interest at the rate of 10 per cent. from maturity. Upon the payment of which said promissory note according to its face and tenor, being well and truly made, then in such case this conveyance is to become null and of no further force or effect. But in case of the failure or default of the payment of said promissory note, at date of maturity, together with the interest thereon accrued, according to its terms and face, at the maturity of the same six months after date then and in such an event, the said trustee is, by these presents fully authorized and empowered, and it is made his special duty at the request of the said A. C. Neal & Co. or the legal holder of said promissory note at any time made after the maturity of said promissory note or any one of them, to sell the said above-described premises to the highest bidder for cash in hand at Vernon, Texas, before the court-house door after giving notice of said sale, as required in judicial sales; and such sales shall be made between the hours of 10 o'clock a. m. and 4 o'clock p. m., of the first Tuesday in any month, and after said sale as aforesaid, to make the purchaser or purchasers thereof a good and sufficient conveyance in law to the property so sold, with the usual covenants and warrants, and to receive the proceeds of said sale, and the same to apply to the payment of said note, the interest thereon accrued and the expenses of executing said trust, holding the remainder thereof subject to the order of me the said T. M. Turner, and it is hereby specially provided that
should the said A. C. Neal from any cause whatever, fail or re-
501 fuse to act, or become disqualified from acting as such trustee,
then the said A. C. Neal & Co., or the legal holder of said promissory note shall have full power to appoint a substitute in writing, who shall have the same powers as are hereby delegated to the said A. C. Neal and I by these presents fully and absolutely ratify and confirm any and all acts which the said A. C. Neal or his substitute, as herein provided, may do in the premises by virtue thereof.

Witness my hand at Vernon, Texas, this 3rd day of March, A. D. 1894.

T. M. TURNER.

THE STATE OF TEXAS, }
County of Wilbarger. }

Before me, M. D. Davis, clerk county court in and for Wilbarger county, Texas, on this day personally appeared T. M. Turner, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 3rd day of March A. D. 1894.

[Seal of County Court.]

M. D. DAVIS,
Co. Cl'k, Wilbarger Co., Texas.

502 THE STATE OF TEXAS, }
County of Wilbarger. }

I, M. D. Davis, clerk of the county court of said county, do hereby certify that the above instrument of writing, dated on the 3rd day of March, A. D. 1894, with its certificate of authentication, was filed for record in my office this the 6th day of March, A. D. 1894, at 3 o'clock p. m., and duly recorded the 7th day of March, A. D., 1894, at 11.15 o'clock a. m., in the deed of trust records of said county in vol. 8 on page No. 219.

Witness my hand and the seal of said county court of said county at office in Vernon, the day and year last above written.

[Seal of County Court.]

M. D. DAVIS,
Clerk County Court, Wilbarger County, Texas.

Endorsed on back: Exhibit T. M. T. No. 19. Deed of trust. T. M. Turner to A. C. Neal, trustee. Filed for record the 6th day of March, 1894, at 3 o'clock p. m. M. D. Davis, Co. clerk Wilbarger Co. Texas.

Fees $1.50 ch'd.

503 The State of Texas to the sheriff or any constable of Wilbarger county, Greeting:

You are hereby commanded to summon T. M. Turner and A. C. Neal 7/15 to appear before the district court of Wilbarger county, to be held at the court-house thereof, in the city of Vernon, on the first Monday in August, A. D. 1895, the same being the 5th day of August, A. D. 1895, then and there to answer the petition of R. C. Neal plaintiff filed in said court on the 12th day of July, A. D. 1895, against the said T. M. Turner and R. C. Neal, defendants for suit; said suit being numbered 841, the nature of which demand is as follows, to wit: Suit on promissory note for $765.00 dated Feb. 26th, 1894, bearing interest at the rate of 10 per cent. per annum from maturity and providing for 10 per cent. as attorneys' fees if sued upon, signed by T. M. Turner, due six months from date and made payable to A. C. Neal & Co.

For foreclosure of a deed of trust to the southeast ¼ of block 26 Texas Town Site Company's addition to the town of Vernon, Wilbarger Co. Texas executed on the 3rd day of March, 1894 by T. M. Turner to A. C. Neal trustee to secure the payment of the above-described note Plaintiff alleges that he is the owner and holder of said note and prays for judgment against T. M. Turner for his debt interest, attorneys' fees and costs of suit, and you will deliver to the said defendants, each in person, a true copy of this citation.

Herein fail not and have you then and there this citation, showing how you have executed the same.

504 Witness, E. L. McHugh, clerk of the district court of Wilbarger county, Texas.

Given under my hand and seal of office at Vernon, this the 13th day of July, A. D. 1895.

[Seal of District Court.]

E. L. McHUGH,
Clerk Dist. Court, Wilbarger County, Texas,
By D. P. HENRY, *Deputy.*

Exhibit T. M. T. No. 20.

Endorsed on back: Copy. No. 841 Citation. District court, Wilbarger county, Texas. August term, 1895. R. C. Neal *vs.* T. M. Turner, *et al.* Issued July 13th, 1895. E. L. McHugh, clerk dist. court, by D. P. Henry, deputy.

505 EXHIBIT T. M. T. No. 21.

THE STATE OF TEXAS, }
County of Wilbarger. }

Know all men by these presents: That I, T. M. Turner, joined by my wife, Carrie Turner of the county of Wilbarger, State of Texas, for and in consideration of the sum of six thousand and four hundred dollars to me in hand paid by Philip A. Tracy, executor of the last will and testament of my deceased brother, S. H. Turner in trust for the use and benefit of my children, viz: Wilmer Turner, Ashby Turner and Lunette Turner, minors which said trust fund together with other similar trust funds was turned over to me without bonds and have been used by me for my own use and benefit, said consideration being in payment of so much of said trust fund, have granted, sold and conveyed and by these presents do grant, sell and convey unto the said Wilmer Turner, Ashby Turner and Lunette Turner, of the county of Wilbarger, State of Texas, all that certain tract or parcel of land described as follows, to wit: State school section No. twenty-six (26) in block No. nine (9) of the Houston and Texas Central Railway Company's surveys in Wilbarger county, Texas.

To have and to hold the above-described premises together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Wilmer Turner, Ashby Turner and Lunette Turner, heirs and assigns forever, and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend, all and singular the said premises unto the said Wilmer Turner,

Ashby Turner and Lunette Turner their heirs and assigns,
506 against every person whomsoever lawfully claiming or to
claim the same or any part thereof.

Witness our hands at Vernon, the 4th day of September, A. D. 1894.

T. M. TURNER.
CARRIE TURNER.

THE STATE OF TEXAS,
County of Wilbarger.

Before me, R. T. Sitterly, a notary public in and for Wilbarger county, Texas, on this day personally appeared T. M. Turner, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 5th day of September, A. D. 1894.

R. T. SITTERLY,
[NOTARIAL SEAL.] *Notary Public, Wilbarger County, Texas.*

THE STATE OF TEXAS,
County of Wilbarger.

Before me, R. T. Sitterly, a notary public in and for Wilbarger county, Texas, on this day personally appeared Carrie Turner, wife of T. M. Turner, known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by
me, privily and apart from her husband, and having the
507 same fully explained to her, she the said Carrie Turner,
acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 5th day of Sept. A. D. 189–.

[Seal of Notary.]

R. T. SITTERLY,
Notary Public, Wilbarger County, Texas.

THE STATE OF TEXAS,
County of Wilbarger.

I, M. D. Davis, clerk of the county court of said county, do hereby certify that the foregoing instrument of writing dated on the 4th day of Sept. A. D. 1894 with its certificate of authentication, was filed for record in my office this 6th day of Sept. A. D. 1894; at 10.35 o'clock a. m., and duly recorded the 6th day of Sept. A. D. 1894, at 11.45 o'clock a. m., in the deed records of said county in vole. 22 on pages 614.

Witness my hand and the seal of the county court of said county at office in Vernon, the day and year last above written.

[Seal of County Court.]

M. D. DAVIS,
Clerk County Court, Wilbarger Co, Texas.

508 Exhibit T. M. T. No. 21.

Endorsed on back: Warranty deed, with joint acknowledgment. T. M. Turner & Carrie Turner to Wilmer Turner *et al.* Filed for record this the 6th day of Sept., A. D. 1894, at 10.35 o'clock a. m. M. D. Davis, county clerk, by Shem E. Hackett, deputy. Recorded Sept. 6, A. D. 1894, in Wilbarger county records of deeds, Book 22, page 614. M. D. Davis, county clerk.

Recording fee, $1.00, due.

This deed should be immediately filed with the county clerk for record.

509 Exhibit T. M. T. No. 22.

THE STATE OF TEXAS,
County of Wilbarger.

Know all men by these presents: That, I, T. M. Turner, of the county of Wilbarger, and State aforesaid, for and in consideration of the sum of three thousand dollars lawful money of the United States, to me paid by Wilmer Turner and Ashby Turner and Lunette Turner, the receipt whereof is hereby acknowledged, have bargained, sold and delivered, and by these presents do bargain, sell and deliver to said Wilmer Turner, Ashby Turner and Lunette Turner, my three minor children, all and singular the following-described personal property, viz: eighteen head of horses, consisting of mares, geldings and colts; eight head of work mules, and all farm machinery and implements of every kind, all now situated on section 26, block 9 H. & T. C. C'y Co.'s surveys in Wilbarger county, Texas, the intention of this conveyance being the payment to my said minor children the amount of the above-named consideration for money belonging to them, and used by me for my own use and benefit.

To have and to hold the said property unto the said Wilmer Turner, Ashby Turner and Lunette Turner, heirs and assigns forever, and I do hereby bind — to warrant and forever defend the title to the said property unto the said Wilmer Turner, Ashby Turner and Lunette Turner, heirs or assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

510 Witness my signature this 4th day of Sept. A. D. 1894.

T. M. TURNER.

THE STATE OF TEXAS,
County of Wilbarger. }

Before me, R. T. Sitterley, a notary public in and for Wilbarger county, Texas, on this day personally appeared T. M. Turner, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 5th day of September, A. D. 1894.

[Seal of Notary.]

R. T. SITTERLEY,
Notary Public, Wilbarger County, Texas.

THE STATE OF TEXAS,
County of Wilbarger. }

I, M. D. Davis, county clerk in and for said county, do hereby certify that the foregoing bill of sale dated the 4th day of Sept. 1894, with its certificate of authentication was filed for record in my office the 6th day of Sept. A. D. 1894, at 10.35 o'clock a. m., and duly recorded the 6th day of Sept. A. D. 1894, at 1.30 o'clock p. m., in bill of sale records of said county in vol. one, on pages 554 & 555.

Witness my hand and the seal of the county court of said county, at office in Vernon, Texas, the day and year last above written.

[Seal of County Court.]

M. D. DAVIS,
Clerk County Court, Wilbarger County, Texas.

511 Endorsed on back: Bill of sale from T. M. Turner to Wilmer Turner, *et al.* Filed for record Sept. 6th, 1894, at 10.35 o'clock a. m. M. D. Davis, county clerk Wilbarger Co. Texas. By Shem. E. Hatchett, deputy.

75 due.

Ex. T. M. T. No. 23.

WASHINGTON, D. C., —— —, 189–.

T. M. Turner in account with the Second National Bank of Washington, D. C.

Please examine and report on this account as soon as convenient.

Dr.									Cr.
1888.					1888.				
Dec.	19.	By check	300		Dec.	1.	Deposit	150	
1889.						10.	Collection, Roth	9	75
Jan'y	26.	" "	265			12.	" Taylor	60	
"	31.	" "	100			13.	" Baldwin	75	
						14.	" Michaelis	105	
						19.	" Andrews	1,023	00
					1889.				
					Jan'y	18.	" Jones	1,030	50
						24.	" Nixon & B	490	73
		Balance Ledger M.	2,717	59		25.	Benton, $125.46, Grant $313.15	438	61
			3,382	59				3,382	59
					Jan'y	31.	Balance Ledger L.	2,717	59
Feb'y	25.	Check	500		March	7.	Baldwin	75	
M'ch	12.	"	500			15.	Groff $30, Taylor $60	90	
	26.	"	500			24.	Benton	181	26
June	4.	"	500		April	9.	Avery	18	
July	3.	"	70		May	15.	Rehwold 309 & 24	333	
	9.	2 "	175			18.	Rehwold	309	
		Balance	3,975	18		20.	Rehwold 24, Benton 1,808.28	1,832	28
					June	13.	McEuen $36, R. & M. 9.75	45	75
						17.	Michaelis	618	30
			6,220	18				6,220	18
		Vou. ret'd July 9, 1889.							
July	10.	Check	200		July	9.	Balance	3,975	18
	26.	"	60			23.	Burns	742	78
Aug.	14.	"	65			27.	Nixon and Bennett	27	00

Ex. T. M. T. No. 23—Continued.

Month	Day	Item	$	cts.
1889.				
Aug.	20.	2 "	146	40
Sept.	4.	"	600	
	7.	2 "	323	16
		"		
Oct.	3.	"	500	
	4.	"	2,000	
Nov.	19.	"	80	
	22.	"	300	
	26.	Telegram	1	45
	30.	Check	40	
Dec.	3.	"	2,000	
	10.	"	100	
	11.	"	200	
513	12.	"	500	
1890.				
Jan'y	4.	Check	175	
	6.	"	80	23
	21.	"	100	
	27.	"	150	
Feby	4.	"	900	
	10.	"	100	
	21.	"	350	
Mar.(?)	24.	2 "	195	
"		"	75	
April	2.	"	600	
	21.	"	2,000	
June	10.	"	1,000	
Aug.	5.	"	500	
	12.	"	75	
	22.	"	50	
		Balance	3,046	87
			16,513	11

Month	Day	Item	$	cts.
1889.				
Aug.	23.	Groff $45 & 45	90	
Sept.	5.	Avery	204	20
	19.	Taylor	60	00
	21.	Groff $50, Baldwin 75	105	00
	30.	Rehwold	250	00
Oct.	1.	Paige 2,486.52, Rehwold $50	2,536	52
	28.	Avery	12	00
Nov.	9.	Jarvis	216	13
	13.	Rehwold	24	00
	16.	"	15	00
	22.	McEuen	36	00
Dec.	10.	Roth & Moore	9	75
	20.	Lee	1,310	60
	28.	Nixon & Bennett	477	23
1890.				
Feb'y	25.	Groff	45	
	26.	Rehwold 508.25, Baldwin 75	583	25
March	11.	Taylor	2,060	00
	21.	Groff	30	
April	18.	Baldwin	2,525	
	21.	Burns	249	06
	29.	Rehwold	821	40
	30.	Avery	12	00
June	13.	Roth & Moore	9	75
	26.	Burns	27	76
	29.	Nixon & Bennett	13	50
Aug.	20.	Groff	45	00
			16,513	11

514 Vou. ret'd Aug. 22, '90.

1890.				1890.			
Aug.	31.	Ch.	350	Aug.	22.	Balance	3,046 87
	"	"	50		23.	Groff	1,500
Sept.	15.	"	500	Sept.	13.	Avery	204 40
Oct.	4.	"	50		18.	Groff	1,031 00
Nov.	14.	"	50	Oct.	30.	Avery	6
Dec.	2.	2 "	100	Nov.	29.	Burus	479 71
	15.	"	50	Dec.	13.	Roth and Moore	9 75
	22.	"	90	1891.			
	29.	2 "	90	Jan'y	30.	Nixon and B	463 73
	30.	"	100				
1891.							
Jan'y	5.	"	14 75				
	9.	"	22 05				
	21.	"	100				
	24.	2 "	60				
Feb'y	5.		100				
	10.	2 "	120				
		Balance	4,894 66				
			6,741 46				6,741 46

515

1891.				1891.			
Feb'y	21.	Ch. T. M. Turner	4,800	Feb'y	13.	Balance	4,894 66
April	10.	" E. H. Turner	1,200		28.	McEuen	1,298 00
	13.	" C. L. Coelle, supt	90				
	27.	" J. E. Sowers	50				
May	15.	" Nettie Turner	40				
	19.	" E. C. Turner	40 00			Balance	27 34
			6,220 00				6,220 00
		Balance	$27 34				

516 EXHIBIT T. M. T. No. 23.

Ex. T. M. T. No. 23.

WASHINGTON, D. C., *Dec.* 19, 1888. No. 1.

(Bank stamp.)

509 Seventh street
N. W.

Second national bank

Pay to the order of T. M. Turner $300.00, three hundred dollars.

T. M. TURNER.

[Endorsed:] T. M. Turner.

WASHINGTON, D. C., *January* 21, 1889. No. 2.

(Stamp 2nd nat'l bank.)

509 Seventh street
N. W.

Second national bank

Pay to the order of Philip A. Tracy $265.00, two hundred and sixty-five dollars.

T. M. TURNER.

[Endorsed:] Philip A. Tracy. (Stamp: Lewis Johnson.)

WASHINGTON, D. C., *January* 21*st*, 1889. No. 3.

(Bank stamp.)

509 Seventh street
N. W.

Second national bank

Pay to the order of Mary M. Rust $100.00, one hundred dollars.

(R. T.)
T. M. TURNER.

[Endorsed:] Mary M. Rust. Pay Citizens' nat'l bank. I. H. Foster & Co. Credit Citizens' nat'l bank, Alexandria, Va. W. H. Lambert, cashier.

509 Seventh street
N. W.

517 WASHINGTON, D. C., *Feb'y 16th*, 1889. No. 4.

(Bank stamp.)

Second national bank

Pay to the order of Leary & Crichton $500.00, five hundred dollars.

T. M. TURNER.

[Endorsed:] 32,112. Pay to order of R. E. Craig & Co. Leary & Crichton. Pay New Orleans nat'l bank or order. R. E. Craig & Co. (3 bank stamps.)

509 Seventh street
N. W.

57,634. WASHINGTON, D. C., *March 6th*, 1889. No. 5.

(Bank stamp.)

Second national bank

Pay to the order of Leary & Crichton $500.00, five hundred dollars.

T. M. TURNER.

[Endorsed:] (Bank stamp.) Pay R. E. Craig & Co. or order. Leary & Crichton. Pay State nat. bank or order. R. E. Craig & Co. (2 bank stamps.)

509 Seventh street
N. W.

WASHINGTON, D. C., *April 20th*, 1889. No. 6.

(Bank stamp.)

Second national bank

Pay to the order of Leary & Crichton $500.00, five hundred dollars.

T. M. TURNER.

[Endorsed:] (Bank stamp.) 36499. Pay R. E. Craig & Co. or order. Leary & Crichton. Pay New Orleans nat. bank or order. R. E. Craig & Co. (2 bank stamps.)

509 Seventh street
N. W.

518 WASHINGTON, D. C., *May 28th*, 1889. No. 7.

(Bank stamp.)

Second national bank

Pay to the order of Leary & Crichton $500.00, five hundred dollars.

T. M. TURNER.

[Endorsed:] (Bank stamp.) Pay R. E. Craig & Co. or order. Leary & Crichton. R. E. Craig & Co. 38847. (2 bank stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *June* 25*th*, 1889. No. 8.

(Bank stamp.)

Second national bank

Pay to the order of Mrs. Mary M. Rust $70.00, seventy dollars.

T. M. TURNER.

[Endorsed:] Mary M. Rust. For deposit only, for credit of J. H. Foster & Co. (Bank stamp.)

509 Seventh street N. W.

WASHINGTON, D. C., *July* 9*th*, 1889. No. 9.

(Bank stamp.)

Second national bank

Pay to the order of Erle Turner $75.00, seventy-five dollars.

T. M. TURNER.

[Written across the face in red ink:] Included in last settlement, $75.00. July 9, '90.

[Endorsed:] Erle Turner. (3 stamps.)

509 Seventh street N. W.

519 WASHINGTON, D. C., *July* 9*th*, 1889. No. 10.

(Bank stamp.)

Second national bank

Pay to the order of T. M. Turner $100.00, one hundred dollars.

T. M. TURNER.

[Endorsed:] T. M. Turner.

509 Seventh street N. W.

WASHINGTON, D. C., *July* 10*th*, 1889. No. 11.

(Bank stamp.)

Second national bank

Pay to the order of T. M. Turner $200.00, two hundred dollars.

T. M. TURNER.

[Endorsed:] T. M. Turner.

509 Seventh street N. W.

WASHINGTON, D. C., *July* 22*nd*, *190–*. No. 12.

(Bank stamp.)

Second national bank

Pay to the order of Mary A. Sowers $60.00, sixty dollars.

T. M. TURNER.

[Endorsed:] Mary A. Sowers, R. D. Hardisty. (Bank stamp.)

509 Seventh street N. W.

520 WASHINGTON, D. C., *July* 22, 1889. No. 13.

(Bank stamp.)

Second national bank

Pay to the order of E. C. Turner $65.00, sixty-five dollars.

T. M. TURNER.

[Endorsed:] (3 bank stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *July* 22*nd*, 1889. No. 14.

(Bank stamp.)

Second national bank

Pay to the order of Thos. L. Settle $15.00, fifteen dollars.

T. M. TURNER.

[Endorsed:] S. Ferguson Beach, pres't. Thos. L. Settle, Lewis Strother. (Stamp.)

509 Seventh street N. W.

131.40. WASHINGTON, D. C., *August* 12*th*, 1889. No. 15.

(Bank stamp.)

Second national bank

Pay to the order of Sam. G. Webb $131.40, one hundred & thirty-one & 40/100 dollars.

T. M. TURNER.

[Endorsed:] Pay to order of Union Ass'n (Ltd.). Sam. G. Webb. Pay to the order of Jno. P. Richardson, Union Ass'n (Ltd.), Jas. M. Miller (m'g'r). Pay to the order of Latham, Alexander & Co., *p. p.* Jas. S. Pristidge. (2 bank stamps.) (3 bank stamps.)

509 Seventh street N. W.

521 WASHINGTON, D. C., *August 29th*, 1889. No. 16.

(Bank stamp.)

Second national bank

Pay to the order of Leary & Crichton $600.00, six hundred dollars.

T. M. TURNER.

[Endorsed:] (2 stamps.) Pay R. E. Craig & Co., or order. Leary & Crichton. Pay New Orleans nat. bank or order. R. E. Craig & Co.

509 Seventh street N. W.

WASHINGTON, D. C., *August 31st*, 1889. No. 17.

(Bank stamp.)

Second national bank

Pay to the order of J. T. Turner $161.58, one hundred & sixty-one & $\frac{58}{100}$ dollars.

T. M. TURNER.

[Endorsed:] J. T. Turner. G. A. Turner. (Stamp.)

509 Seventh street N. W.

34567, Ferris. WASHINGTON, D. C., *August 31st*, 1889. No. 18.

(Bank stamp.)

Second national bank

Pay to the order of G. A. Turner $161.58, one hundred & sixty-one & $\frac{58}{100}$ dollars.

T. M. TURNER.

[Endorsed:] G. A. Turner. Pay & remit, Nat. Park bank, New York. (Stamp.)

509 Seventh street N. W.

522 WASHINGTON, D. C., *Sept. 26th*, 1889. No. 19.

5772. (Bank stamp.)

Second national bank

Pay to the order of Erle Turner $2,000, two thousand dollars.

T. M. TURNER.

[Endorsed:] (Bank stamp.) Erle Turner. Pay Western nat. bk. N. Y. (2 stamps.)

509 Seventh street
N. W.

WASHINGTON, D. C., *Sept.* 28*th*, 1889. No. 20.

(Bank stamp.)

Second national bank

Pay to the order of Joseph Greer, $500.00, five hundred dollars.

T. M. TURNER.

[Endorsed:] Joseph Greer. C. (3 bank stamps.)

509 Seventh street
N. W.

6309. WASHINGTON, D. C., *Oct.* 12*th*, 1889. No. 21.

(Bank stamp.)

Second national bank

Pay to the order of Erle Turner $300.00, three hundred dollars.

T. M. TURNER.

[Endorsed:] Erle Turner. (3 bank stamps.)

509 Seventh street
N. W.

523 WASHINGTON, D. C., *Oct.* 12*th*, 1889. No. 22.

(Bank stamp.)

Second national bank

Pay to the order of E. C. Turner $80.00, eighty dollars.

T. M. TURNER.

[Endorsed:] (3 bank stamps.)

509 Seventh street
N. W.

WASHINGTON, D. C., *Nov.* 14*th*, 1889. No. 23.

(Bank stamp.)

Second national bank

Pay to the order of Erle Turner $500.00, five hundred dollars.

T. M. TURNER.

[Endorsed:] Erle Turner. Erle H. Turner. W. L. Moody & Co., N. Y. W. L. Moody & Co. (2 bank stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *Nov.* 22*nd*, 1889. No. 24.

(Bank stamp.)

Second national bank

Pay to the order of George Life $100.00, one hundred dollars.

T. M. TURNER.

[Endorsed:] (Stamp.) George Life. Mayer Sons & Co. (2 stamps.)

509 Seventh street N. W.

524 WASHINGTON, D. C., *Nov.* 23*d*, 1889. No. 25.

31434. (Bank stamp.)

Second national bank

Pay to the order of G. A. Turner $40.00, forty dollars.

T. M. TURNER.

[Endorsed:] Pay to National exchange bank. G. A. Turner. (Bank stamp.)

509 Seventh street N. W.

WASHINGTON, D. C., *Nov.* 27*th*, 1889. No. 26.

(Bank stamp.)

Second national bank

Pay to the order of Joseph Greer $2,000.00, two thousand dollars.

T. M. TURNER.

[Endorsed:] Joseph Greer. (3 stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *Dec.* 3*d*, 1889. No. 27.

(Bank stamp.)

Second national bank

Pay to the order of Erle Turner $200.00, two hundred dollars.

T. M. TURNER.

[Endorsed:] Erle H. Turner. Erle H. Turner. (3 bank stamps.)

525 WASHINGTON, D. C., *Dec.* 24, 1889. No. 28.

(Bank stamp.)

509 Seventh street N. W.

Second national bank

Pay to the order of Erle Turner $175.00, one hundred & seventy-five dollars.

T. M. TURNER.

[Endorsed:] Erle H. Turner. (5 stamps.)

WASHINGTON, D. C., *Dec.* 27*th*, 1889. No. 29.

(Bank stamp.)

509 Seventh street N. W.

Second national bank

Pay to the order of Eppa Hunton, Jr., $80.23, eighty and $\frac{23}{100}$ dollars.

T. M. TURNER.

[Endorsed:] Pay to order cashier First national bank, Alexandria, Va. Eppa Hunton, Jr. Ep. H., Jr. (Stamp.)

1/15. WASHINGTON, D. C., *January* 11*th*, 1890. No. 30.

(Bank stamp.)

509 Seventh street N. W.

Second national bank

Pay to the order of Erle Turner $100.00, one hundred dollars.

T. M. TURNER.

[Endorsed:] Erle Turner. (2 stamps.)

526 WASHINGTON, D. C., *January* 18*th*, 1890. No. 31.

(Bank stamp.)

509 Seventh street N. W.

Second national bank

Pay to the order of Erle H. Turner $150.00, one hundred & fifty dollars.

T. M. TURNER.

[Endorsed:] Erle Turner. 5140. (Bank stamp.) (4 bank stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *January 29th*, 1890. No. 32.

(Bank stamp.)

Second national bank

Pay to the order of Leary & Crichton $900.00, nine hundred dollars.

T. M. TURNER.

[Endorsed:] (4 stamps.) Pay to order of R. E. Craig & Co. Leary & Crichton. Pay N. O. nat'l bank or order. R. E. Craig & Co. for Geo. W. Palfrey.

509 Seventh street N. W.

WASHINGTON, D. C., *January 31st*, 1890. No. 33.

(Bank stamp.)

Second national bank

Pay to the order of Erle Turner $100.00, one hundred dollars.

T. M. TURNER.

[Endorsed:] Erle H. Turner. Erle Turner. (1 stamp.) W. L. Moody & Co. (2 bank stamps.)

509 Seventh street N. W.

527 WASHINGTON, D. C., *February 14th*, 1890. No. 34.

(Bank stamp.)

Second national bank

Pay to the order of George Life $100.00, one hundred dollars.

T. M. TURNER.

[Endorsed:] George Life (1 stamp) for deposit account of Mayer Son & Co. (2 stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *February 15th*, 1890. No. 35.

(Bank stamp.)

Second national bank

Pay to the order of Leary & Crichton $350.00, three hundred and fifty dollars.

T. M. TURNER.

[Endorsed:] 55795. Pay R. E. Craig & Co., or order. Leary & Crichton. Pay New Orleans nat. bank, or order. R. E. Craig & Co. (3 bank stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *February* 15*th*, 1890. No. 36.

(Bank stamp.)

Second national bank

Pay to the order of S. J. Harrell $95.00, ninety-five dollars.

T. M. TURNER.

[Endorsed:] Pay to S. G. Harrell, or order. S. G. Harrell. Pay E. C. Meacham Arms Co., or order. Sam. G. Webb. (5 stamps.)

509 Seventh street N. W.

528 WASHINGTON, D. C., *M'ch* 18*th*, 1890. No. 37.

(Bank stamp.)

Second national bank

Pay to the order of Montgomery Ward & Co., Chicago, Ill., $75.00, seventy-five dollars.

T. M. TURNER.

[Endorsed:] Montgomery Ward & Co. (3 stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *M'ch* 26*th*, 1890. No. 38.

Second national bank

Pay to the order of T. M. Turner $600.00, six hundred dollars.

T. M. TURNER.

[Endorsed:] T. M. Turner. (Stamp.) Pay to W. D. Moody & Co., N. Y. W. L. Moody & Co. (2 bank stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *April* 14*th*, 1890. No. 39.

(Bank stamp.)

Second national bank

Pay to the order of the State National Bank of Vernon, Texas, $2000.00, two thousand dollars.

T. M. TURNER.

[Endorsed:] Pay W. L. Moody & Co., N. Y. (Stamp.) W. L. Moody & Co. (2 stamps.)

509 Seventh street N. W.

529 WASHINGTON, D. C., *June 4th*, 1890. No. 40.

(Bank stamp.)

Second national bank

Pay to the order of the State National Bank of Vernon, Tex. $1000.00, one thousand dollars.

T. M. TURNER.

[Endorsed :] Pay to W. L. Moody & Co., N. Y. (Stamp.) W. L. Moody & Co. (2 stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *August 1st*, 1890. No. 41.

Cash. (Bank stamp.)

Second national bank

Pay to the order of R. S. Rus*h* $75.00, seventy-five dollars.

T. M. TURNER.

[Endorsed :] R. S. Rust. Pay to the order of J. Fahmstock & Co. A. J. Singleton. D. Fahmstock & Co. (2 bank stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *August 5th*, 1890. No. 42.

(Bank stamp.)

Second national bank

Pay to the order of T. M. Turner $500.00, five hundred dollars.

T. M. TURNER.

[Endorsed :] T. M. Turner.

509 Seventh street N. W.

530 WASHINGTON, D. C., *August* 19, 1890. No. 44.

(Bank stamp.)

Second national bank

Pay to the order of R. S. Rust $50.00, fifty dollars.

T. M. TURNER.

[Endorsed :] (1 stamp.) R. S. Rust, J. C. Cologne. Pay Riggs & Co., Washington, D. C., or order. Burke & Herbert.

509 Seventh street N. W.

WASHINGTON, D. C., *August 27th*, 1890. No. 45.

(Bank stamp.)

Second national bank

Pay to the order of Joseph H. Chilcott $350.00, three hundred & fifty dollars.

T. M. TURNER.

[Endorsed:] J. H. Chilcott. (Stamp.) Chas. R. Hooff, cashier. (Stamp.)

509 Seventh street N. W.

WASHINGTON, D. C., *August 27th*, 1890. No. 46.

(Bank stamp.)

Second national bank

Pay to the order of Kirby & Leach $50.00, fifty dollars.

T. M. TURNER.

[Endorsed:] Kirby & Leach. (2 stamps.)

509 Seventh street N. W.

531 WASHINGTON, D. C., *September 8th*, 1890. No. 47.

(2 bank stamps.)

Second national bank

Pay to the order of E. H. Turner $500.00, five hundred dollars.

T. M. TURNER.

[Endorsed:] Erle H. Turner. (4 bank stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *Sept. 25th*, 1890. No. 48.

(Bank stamp.)

Second national bank

Pay to the order of E. C. Turner $50.00, fifty dollars.

T. M. TURNER.

[Endorsed:] E. C. Turner. J. E. Sowers. Louis Schene. (3 stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *Nov. 5th*, 1890. No. 49.

(Bank stamp.)

Second national bank

Pay to the order of Adams & Orison $50.00, fifty dollars.

T. M. TURNER.

[Endorsed :] Adams & Orison. (2 stamps.)

509 Seventh street N. W.

532 WASHINGTON, D. C., *Nov. 26th*, 1890. No. 50.

(Bank stamp.)

Second national bank

Pay to the order of Adams & Orison $50.00, fifty dollars.

(R. T.)
T. M. TURNER.

[Endorsed :] Adams & Orison. (2 stamps.)

509 Seventh street N. W.

WASHINGTON, D. C., *Dec. 11th*, 1890. No. 53.

(Bank stamps.)

Second national bank

Pay to the order of W. K. Adams (cash) $50.00, fifty dollars.

T. M. TURNER.

[Endorsed :] W. K. Adams, W. K. Adams & Co. (2 bank stamps.) (1 bank stamp.)

509 Seventh street N. W.

WASHINGTON, D. C., *Dec. 22nd*, 1890. No. 54.

(Bank stamp.)

Second national bank

Pay to the order of J. E. Sowers (bank stamp) $100.00, one hundred dollars.

T. M. TURNER.

[Endorsed :] J. E. Sowers, V. H. Ford. (3 bank stamps.)

509 Seventh street
N. W.

533 WASHINGTON, D. C., *Dec.* 23*d*, 1890. No. 55.

(Bank stamp.)

Second national bank

Pay to the order of Adams & Orison $50.00, fifty dollars.
(R. T.)
T. M. TURNER.

[Endorsed :] Adams & Orison. (2 bank stamps.)

509 Seventh street
N. W.

WASHINGTON, D. C., *Dec.* 23*d*, 1890. No. 56.

(Bank stamp.)

Second national bank

Pay to the order of Adams & Orison $40.00, forty dollars.
(R. T.)
T. M. TURNER.

[Endorsed :] Adams & Orison. (2 bank stamps.)

509 Seventh street
N. W.

WASHINGTON, D. C., *Dec.* 30*th*, 1890. No. 57.

(Bank stamp.)

Second national bank

Pay to the order of H. V. Hudson $14.75, fourteen & $\frac{75}{100}$ dollars.

T. M. TURNER.

[Endorsed :] Pay to G. W. B. White or order cash int. at Met. bank. W. V. Hudson. (Bank stamp.)

509 Seventh street
N. W.

534 WASHINGTON, D. C., *January* 6*th*, 1890. No. 58.

(Bank stamp.)

Second national bank

Pay to the order of J. E. Sowers $22.05, twenty-two & $\frac{5}{100}$ dollars.

T. M. TURNER.

[Endorsed :] J. E. Sowers, J. K. Briggs. (2 stamps.)

WASHINGTON, D. C., *January 7th*, 1890. No. 59.

(Bank stamp.)

509 Seventh street N. W.

Second national bank

Pay to the order of E. H. Turner $100.00, one hundred dollars.

T. M. TURNER.

[Endorsed :] Erle H. Turner. (4 bank stamps.) W. L. Moody & Co.

WASHINGTON, D. C., *January 16th*, 1891. No. 60.

(Bank stamp.)

509 Seventh street N. W.

Second national bank

Pay to the order of W. K. Adams & Co. $30.00, thirty dollars.

T. M. TURNER.

[Endorsed :] W. K. Adams & Co. (3 bank stamps.)

535 WASHINGTON, D. C., *January 20th*, 1891. No. 61.

(Bank stamp.)

509 Seventh street N. W.

Second national bank

Pay to the order of W. K. Adams & Co. $30.00, thirty dollars.

T. M. TURNER.

[Endorsed :] W. K. Adams & Co. (3 bank stamps.)

WASHINGTON, D. C., *Feb. 2nd*, 1891. No. 62.

(Bank stamp.)

509 Seventh street N. W.

Second national bank

Pay to the order of V. H. Ford $20.00, twenty dollars.

T. M. TURNER.

[Endorsed :] Pay to the order of F. E. Keyes, "cashier." V. H. Ford. (3 bank stamps.)

500 Seventh street N. W.

WASHINGTON, D. C., *Feb. 2nd*, 1891. No. 63.

(Bank stamp.)

Second national bank

Pay to the order of W. M. Fielding $100 00, one hundred dollars.

T. M. TURNER.

[Endorsed:] W. M. Fielding. (2 stamps.)

500 Seventh street N. W.

536 WASHINGTON, D. C., *February 3d*, 1891. No. 64.

Second national bank

Pay to the order of V. H. Ford $100.00, one hundred dollars.

T. M. TURNER.

[Endorsed:] Pay to the order of F. E. Keyes, "cashier." V. H. Ford. (3 stamps.)

500 Seventh street N. W.

WASHINGTON, D. C., *July* 9, 1889. No. —.

Second national bank

Pay to John E. Turner or bearer $75 *dollars*.

(R. T.)
Charge T. M. TURNER.

537 EXHIBIT W. E. E. No. 1.

Riggs house.

WASHINGTON, D. C., *May* 5, 1898.

DEAR SIR: You have my certificate for 1/10 interest in sq. 649 in your possession.

Please make it into two certificates of 1/20 each—one in my name and one in the name of Erle H. Turner (Erle H. Turner) and send them to Mr. Mayse at Peoria, Indian Territory as soon as possible and ask him to sign and return without delay. I will pay all charges to you if there be any.

Yours truly, PHILIP A. TRACY.

To Mr. W. E. Edmonston, trustee.

538 EXHIBIT MISS TURNER RECALLED NO. 1.

FEB. 16TH, 1899.

DEAR WILMER: I hope I satisfied you about papers. I did the best I could, in the time I had. I think you certainly have had all the papers necessary to prove Tracy did have and handle money after Brother Silas' death. I sent you two letters typewritten and one in three or four pieces in Tracy's own handwriting also the questions sent me to be answered. Why did you go to Washington? And what did Erle do with papers I sent him. I sent him some very valuable ones by express. I valued papers at fifty dollars—find out if he ever got them. I don't understand why he has never answered any of my letters. I know he has gotten them or they would have gone to dead letter office and come back again to me. Did he want you to go to Washington, or did lawyer summon you? I have not received package. Did you send by exp. or mail? I saw a man the other day at depot, where I went to ask about griddles, and he told — they had not come, and he says they are no good for private families—are all right in a hotel or boarding-house, where the fire is kept hot all the time—says it takes too long to heat them. I shall just take mine and keep on heater and use it when I want cakes. We have had the longest and coldest spell ever known to this country, 16 degrees below zero. The ground has been frozen for a mo. We think our oats are dead about 60 acres, and in all probability some of our wheat. All Mr. Glass' has been killed four or five hundred acres. Thousands of cattle froze to death. I have heard of a good many people freezing. The weather has just moderated a little. Still raw and 539 cold today. That is the reason your letter staid in office two days before I got it, and in my haste I may have neglected some things. I want you to be sure and copy my letter, in fact your papa says copy all. Did I tell you Monk was dead? Kate her mother gave birth to a fine colt the other night in *all* most the coldest spell—it will be the image of Monk. Have you heard from La. lately? When did you write to Uncle E. there or hear from him? I have often thought I would like to have Minden paper. Wouldn't you. I also want a catalogue of the college from there. I had fever last week two days. Do you remember Mrs. McDavid who lived almost opposite Mrs. Tolbert's? She died last week with pneumonia and left a young baby about 3 weeks old. I was real uneasy about myself thought I was taking la grippe. You asked about Mrs. Ferguson some time ago. She died the next spring I think after you left. The Bells have left Vernon; gone to Oklahoma. Pearl is I hear quite a young and popular lady. In answer to the 10th question I ought not have answered it as I did. The list I sent was a copy only. I believe Erle got the one in Tracy's handwriting. Your papa has it just found it. I tried to get your papa to write this eve but I am afraid he will not. I am going to mail this tomorrow (Fri.) sure. I have the exp. receipt for the letters sent Erle.

Find out if he got them. I valued them at $50. May God bless you and keep you safely.

Your loving,
MAMMA.

540 EXHIBIT MISS TURNER RECALLED NO. 2.

S. H. TURNER.

Nov. 1, '79.	Susan W. McNamee	1,700.00
Jan. 19, '81.	Edwin F Jones	1,000.00
April 7, '75.	J. H. Hallidge	800.00
M'ch 22, '84.	John B. Taylor	1,000.00
" " "	" " "	1,000.00
July 12, '81.	Flora V. Anderson (2)	1,000.00
June 6, '85.	Jennie J. West	3,400.00
April 13, '85.	Caroline Isdell (2)	1,335.20
Dec. 15, "	Eliz. V. Lee	600.00
" " "	" " "	600.00
Jan'y 8, '86.	Mary J. Lewis (3)	1,200.00
Dec. 30, '85.	John L. Carnie	1,350.00
May 19, '86.	Julius Rehnold	2,200.00
Dec. 24, '85.	Rufus A. Morrison	1,500.00
Oct. 30, '86.	John B. Avery (4)	800.00
Oct. 2, '86.	Thos. R. Benton (15)	1,800.00
June 1, "	G. H. La Fetra	1,036.90
April 18, '87.	L. A. Grant	300.00
Aug. 20, '85.	D. B. Groff	1,500.00
Feb. 18, '88.	C. W. Baldwin	2,500.
Jan'y 29, "	A. H. Nixon (3)	1,350.00
M'ch 12, "	D. B. Groff	1,000.00
		28,972.10

541 EXHIBIT MISS TURNER RECALLED NO. 3.

Memo.—To write to Mrs. Turner.

1. What papers she sent to Erle. He has either never rec'd them or probably mislaid them. State contents near as she can remember.

2. Give full & particular account of all that took place at her interview with Mr. Tracy in Washington. Date of the interview, where it occurred & who was present.

3. State whether she ever received any statement or ever saw one written by Mr. Tracy giving the amount of the estate of Silas H. Turner.

4. State fully all she knows or can learn as to any money paid over by Mr. Tracy to Mr. Turner or any one else belonging to the children.

5. State whether Mr. Turner was ever appointed by any court guardian for the children.

6. Where did Mr. Silas H. Turner die. What became of his papers.

7. Was his will ever probated & estate administered. If so, where?

8. Send every letter, memorandum or other writing by Mr. Tracy no matter to what it relates.

9. Ask Mr. Thomas M. Turner to give full & particular information as to all he knows about Mr. Silas H. Turner's affairs & Mr. Tracy's connection therewith & all that he knows of Mr. Tracy's dealing with the trust estate.

542 10. Find out what is known of a list of promissory notes in Mr. Tracy's handwriting marked S. H. Turner.

11. Did Mr. Tracy ever send any money belonging to the children to either Mr. or Mrs. Turner & if so was it by check & on what bank.

543 EXHIBIT MISS TURNER RECALLED NO. 4.

1st. I sent to Erle a copy of the will—List of notes in Philip A. Tracy's handwriting, headed S. H. Turner, a list of notes amounting in all to $28,972.10 twenty-eight thousand nine hundred & seventy-two & 10/100 dollars. (I send copy of said list herewith) also several letters from Philip Tracy. I do not know contents of the letters only that they referred to the estate.

2nd. My interview with Mr. Tracy was either in Jan. or Feb. of 1891. There was no one present but Mr. Tracy and myself; our conversation was about estate. I wished to know how the estate was being managed, how the money was being turned over to my husband, or whether it had been turned over to him in any amount, and if there were any bondsmen; and if there had been any administration of the estate.

Mr. Tracy told me there had been no administration, and consequently no bondsmen. That what he had turned over to T. M. Turner had been with my husband's being appointed guardian for the children. He then said he thought he had made a mistake in doing so, or words to that effect.

3rd. I saw the list of notes marked S. H. Turner mentioned in answer to 1st question. I also received letter from Philip A. Tracy, dated 2/12, '91 which letter I send herewith.

4th. I do not know that any money was turned over to any one but my husband T. M. Turner.

5th. T. M. Turner was never appointed by any court guardian for our children.

544 6th. S. H. Turner died in Fauquier Co. Va. all papers he had were turned over to T. M. Turner.

7th. The will was probated at Warrenton, Va.

8th. Have sent what papers I could find at present.

10th. I send list of promissory notes.

11th. No money or notes were ever sent to me. I think the notes were deposited in 2nd national bank, Washington, D. C.

MRS. T. M. TURNER,
Vernon, Tex.

545 EXHIBIT S. H. TURNER'S WILL.

S. H. Turner's Will.

WASHINGTON, D. C., *April* 30, 1888.

I hereby give and bequeath to the four children of my brother Thomas M. Turner of Minden, Louisiana, all property real and personal, owned by me, or in which I have any interest at the time of my death, and appoint Philip A. Tracy to distribute the proceeds of the said property equally between them.

S. H. TURNER.

Witness-:
PHILIP A. TRACY.
GEO. G. FENTON.

At a court held for Fauquier county at the court-house of said county, on Monday the 26th day of November, 1888. A paper-writing dated 30th of April 1888, purporting to be the last will and testament of S. H. Turner, deceased was this day produced to the court for probate by Eppa Hunton Jr. and it appearing that Philip A. Tracy and Geo. G. Fenton the attesting witnesses reside out of this State, and in Washington city in the District of Columbia, the court doth award a commission to take the depositions of said witnesses annexed to said will or a certified copy thereof and directed to Jos. J. Linney, a notary public for Washington, D. C., or to some person authorized by law to take depositions, directing him to take and certify unto this court said depositions together with said 546 certified copy of will and commission attached.

A copy.

Test:

R. H. DOWNMAN,
Clerk of Fauquier County Court.

STATE OF VIRGINIA:

The Commonwealth of Virginia to Jos. J. Linney, notary public, or any commissioner appointed by the governor of this State, or to any justice or notary public of the city of Washington, D. C., Greeting:

Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining Philip A. Tracy and Geo. G. Fenton, attesting witnesses to the last will and testament of S. H. Turner, deceased, (a copy of which is hereto attached) offered for probate in the county court of Fauquier county, Virginia, at its November term, 1888, authorize and request you, that at such certain day and place as you shall appoint, the witnesses aforesaid before you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, and their examinations into our said court, distinctly and plainly without delay, send and certify, enclosed together with this writ, directed to the clerk thereof.

Witness R. H. Downman, clerk of our said county court, at the court-house aforesaid, this 26th day of November, 1888, and in the 113th year of the Commonwealth.

R. H. DOWNMAN, *Clerk.*

547 1 question. What is your name, age and place of residence?

2 question. Are you one of the attesting witnesses to the will of S. H. Turner, deceased, a copy of which is annexed to said commission?

3 question. Was the will of said Silas H. Turner signed by the said Silas H. Turner, or was the will acknowledged by him in the presence of yourself and Geo. G. Fenton (and when Mr. Fenton is examined, put Philip A. Tracy's name in place of Fenton) and in the presence of said S. H. Turner.

4 question. Was or not Silas H. Turner at the time he made and published his said will of sound mind and disposing memory?

THE COMMONWEALTH OF VIRGINIA:

In the matter of the will of Silas H. Turner deceased, depositions were taken before me Jno. J. Linney, a notary public within and for the District of Columbia, pursuant to the annexed notice, on the 28th day of November 1888 at one o'clock p. m., at Washington, D. C., to be read in connection with the matter of the will of the late Silas H. Turner, offered for probate in the county court of Fauquier county in the State of Virginia to wit:

PHILIP A. TRACY being duly sworn, made the following answers to the recorded interrogatories herewith, said interrogatories being communicated in writing to Jno. J. Linney notary public, to be propounded by him to witness, and the same are attached hereto—namely:

1 Q. What is your name, age and place of residence? A. 548 Philip A. Tracy. I am 53 years of age. I am a clerk in the United States Post-Office Department, Washington, D. C., but I consider myself a citizen of Fauquier county, State of Virginia.

2 Q. Are you one of the attesting witnesses to will of Silas H. Turner, deceased, a copy of which is annexed to said commission? A. Yes.

3 Q. Was the will of said Silas H. Turner signed by the said Silas H. Turner, or was the will acknowledged by him, in the presence of yourself and George G. Fenton, and in the presence of Silas H. Turner? A. It was signed by him. He asked me to write the will for him, which I did, and he signed it in my presence at my desk, when it was written, we witnessed his will in his presence and in the presence of each other.

4 Q. Was or not Silas H. Turner at the time he made and published his said will, of sound mind and disposing memory? A. He was, undoubtedly.

PHILIP A. TRACY.

549 GEORGE G. FENTON, being duly sworn made the following answers to the interrogatories herein written, to wit:

1 Q. What is your name, age and place of residence? A. George G. Fenton, I am forty-five years of age, and my residence is Washington, D. C.

2 Q. Are you one of the attesting witnesses to the will of Silas H. Turner, deceased, a copy of which is annexed to said commission. A. I believe I am.

3 Q. Was the will of Silas H. Turner signed by the said Silas H. Turner, or was the will acknowledged by him, in the presence of yourself and Philip A. Tracy and in the presence of said Silas H. Turner. A. Signed by him in our presence, Philip A. Tracy and I witnessed his will in his presence and in the presence of each other.

4 Q. Was or was not Silas H. Turner at the time, he made and published his will of sound mind and disposing memory. A. He was so far as I could judge.

(Signed) GEORGE G. FENTON.

550 CITY OF WASHINGTON, } *ss:*
District of Columbia, }

I, Jno. J. Linney a notary public in and for the District of Columbia, duly commissioned and qualified do hereby certify that the above-named Philip A. Tracy and George G. Fenton, were by me first severally sworn to testify the truth, the whole truth and nothing but the truth, and that the depositions by them respectively subscribed as above set forth, were reduced to writing by me in the presence of the witnesses respectively and were subscribed by said witnesses in my presence, and were taken at the time and place in the above caption specified. I do further certify that I am not a relative or attorney of either party or otherwise interested in the event of this matter.

In witness whereof I have hereunto set my hand and seal of office this 28th day of November, A. D. 1888.

JNO. J. LINNEY,
Notary Public.

[SEAL.]

Fauquier County Court, November 28, 1888.

The paper-writing dated April 30, 1888, purporting to be the last will and testament of S. H. Turner, dec'd, was this day again propounded to the court for probate, and the commission heretofore awarded to take the depositions of Philip A. Tracy and George G. Fenton attesting witnesses attached to a certified copy of said will accompanied by the depositions of said attesting witnesses being certified into this court, and said paper-writing dated as aforesaid being fully proved is ordered to be recorded as the true last will and testament of S. H. Turner, dec'd.

Teste: R. H. DOWNMAN, *Clerk.*

551 STATE OF VIRGINIA,
Fauquier County, } *To wit:*

I, A. R. Bartenstein, clerk of the county court for Fauquier county in the State of Virginia, the same being a court of record, having a seal, do certify that the foregoing is a true copy of the last will and testament of Silas H. Turner, dec'd as fully and wholly as the same appears upon the records of the said county court.

[SEAL.] In testimony whereof, I have hereunto subscribed my name and affixed the seal of said county court, this the 11th day of February, 1899, and in the 123 year of the Commonwealth.

A. R. BARTENSTEIN, *Clerk.*

STATE OF VIRGINIA,
County of Fauquier, } *To wit:*

I, C. M. White, only judge of the county court of Fauquier county in the State of Virginia, do certify that A. R. Bartenstein, who hath given the preceding certificate, is clerk of the said court duly elected and qualified and that his attestation is in due form of law.

Given under my hand and seal this 11th day of February, 1899.

C. M. WHITE, [SEAL.]
Judge of Fauquier County Court.

552 STATE OF VIRGINIA,
County of Fauquier, } *To wit:*

I, A. R. Bartenstein, clerk of the county court for Fauquier county in the State of Virginia, the same being a court of record, having a seal, do certify that C. M. White whose genuine signature is subscribed to the foregoing certificate, is and was at the time only judge of the county court of Fauquier county and that his official acts as such judge, are worthy of full faith and credit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said county court, this the 11th day of February, 1899.

[SEAL.] A. R. BARTENSTEIN, *Clerk.*

553 EXHIBIT CARLISLE & JOHNSON NO. 1.

Offices of Carlisle & Johnson, attorneys and counsellors at law,
rooms 30 to 36, Fendall law building.

Calderon Carlisle. William G. Johnson.

(Copy.)

WASHINGTON, D. C., *Sep.* 21, 1898.

Messrs. Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased.

GENTLEMEN: We have been retained by Messrs. Erle H. and Ashby Turner and the Misses Wilmer and Lunette Turner, nephews and nieces of the late Silas H. Turner to represent them in their claim against the estate of your testator.

Our clients claim that the late Mr. Tracy held in trust for them under the will of their uncle the late Silas H. Turner, the sum of about thirty thousand dollars. Mr. Silas H. Turner died about the year 1888, and the only moneys ever received from Mr. Tracy by the nephews and nieces aggregate about the sum of thirteen hundred dollars, making the claim of our clients thirty thousand dollars, with interest thereon from the year 1888, less the payment of thirteen hundred dollars mentioned above.

We will in due course establish the claim to your satisfaction, but in the meantime think it only right to give you this notice that you may make no payments of any character from Mr. Tracy's
554 estate until the claim of our clients is settled.

Yours truly,
CARLISLE & JOHNSON.

EXHIBIT CARLISLE & JOHNSON NO. 2.

J. J. Darlington, attorney-at-law; office, 410 Fifth street.

WASHINGTON, D. C., *Sept.* 26, 1898.

Messrs. Carlisle & Johnson, Washington, D. C.

GENTLEMEN: Your favor of the 21st inst. stating that you represent the Turner heirs in a claim against the late Philip A. Tracy is duly to hand. We have paid some small amounts, aggregating only about $400, but were in entire ignorance that there were any claims of importance against the estate, and thank you for your kindly notice of this large claim.

Yours truly,
J. J. DARLINGTON.

555 EXHIBIT CARLISLE & JOHNSON NO. 3.

J. J. Darlington, attorney-at-law; office, 410 Fifth street.

WASHINGTON, D. C., *October 28th*, 1898.

Messrs Carlisle & Johnson, city.

GENTLEMEN: On behalf of my co-executor and myself, and by his direction, I beg to inform you that the executors of the estate of the late Philip A. Tracy are unable to recognize the Turner claim called to our attention by you some weeks since, but are compelled to reject the same.

Yours very truly,
J. J. DARLINGTON.

556

COMPLAINANTS' EXHIBIT A.

Harriet Tarkinton }
to } Deed.
T. M. Turner. }

STATE OF LOUISIANA, }
Parish of Claiborne. }

Know all men by these presents, that on this 7th day of December, A. D. eighteen hundred and sixty-eight, before me, Riel Allen Lancaster, a notary public duly commissioned and sworn in and for the State and parish, personally came and appeared Miss Harriet Tarkinton, resident of the parish and State aforesaid, who in the presence of the two subscribing witnesses, competent persons, and males of lawful age, domiciled in said State and parish.

Then and there declared and stated that for and in consideration of the sum of nine hundred dollars, three hundred dollars paid in hand, the receipt of which is hereby acknowledged and the sum of three hundred — paid the first day of January, A. D. eighteen hundred and seventy, and the sum of three hundred dollars paid the first day of January, A. D. eighteen hundred and seventy-one, with eight cent. interest from due until paid.

She does grant, bargain, sell, transfer and convey all of her right and title to the following-described lands to wit: The east half of the northwest quarter of section twenty-one (21) township nineteen (19) range nine, containing eighty acres more or less, also the northwest quarter of the northwest qua-ter of section twenty-one (21) township nineteen (19) of range nine, containing forty acres, more or less, also the southwest quarter of the northwest quarter of
557 section twenty-one (21) in township nineteen (19) range nine (9) containing forty acres more or less, all of said land lying and being situated in said parish and State, unto the said T. M. Turner of same residence, with a full right and title and warranty against all troubles, debts, mortgages, for his own use and behoof forever. The said Turner being present and signing and accepting the same for himself. Know further that the said lands are to be delivered to said Turner upon the payment of the sum of three hundred dollars in currency with all the improvements thereon.

The said Turner has this day and date made his two promissory notes for three hundred dollars each, in favor of Harriet Tarkington, which are paraphed *ne varietur* to identify the same herewith as follows: One note due and payable the first day of January, A. D. 1870 for the sum of three hundred dollars. One other note due and payable the 1st day of January, A. D. 1871 for three hundred dollars. All bearing an even date herewith and paraphed *ne varidur.* Be it further by these presents expressly stipulated, that the said vendor does retain on the said land herein conveyed, a special mortgage and vendor's lien and hypothecation thereon for the faithful and punctual payment of the foregoing notes for the purchase price thereof in strict conformity with the obligations.

Wherefore, I the said notary having caused the said declarations of said parties to be reduced to writing in my presence and in the presence of the two attesting witnesses aforesaid *to* sign the same in my presence and in presence of each other both vendor and vendee on this the 7th day of December, A. D., 1868 at my office in the town of Minden, Claiborne parish Louisiana.

(Signed)
HARRIET TARKINTON.
T. M. TURNER.

Attest:
THOS. W. RANDLE.
JOHN W. JONES.

R. A. LANCASTER,
Notary Public.

558 Endorsed: Filed Dec 24th, 1870. J. R. Ramsay, recorder. Duly recorded in conveyance records of Claiborne parish, Book "J" on page- 326 & 327—Dec'r 28th, 1870. Seal J. R. Ramsey, recorder. Filed and recorded this 25th day of October, 1871, and duly stamped according to law. F. E. Heath, recorder.

STATE OF LOUISIANA, } *ss:*
Parish of Webster, }

I, J. H. Tillman, clerk, of the district court and *ex officio* recorder in and for Webster parish Louisiana, do hereby certify that the annexed and aforegoing three pages is a true and correct copy of the deed from Harriet Tarkinton to Thomas M. Turner made from the records of my office as the same appears recorded in conveyance records of Webster parish volume one (1) folios 88 to 90, inclusive.

Given under my hand and seal of office at Minden, Louisiana, this 17th day of June, A. D. 1901.

J. H. TILLMAN,
[SEAL.] *Clerk of the District Court and ex Officio Recorder.*

Revenue stamp. J. H. T. 6, 17, 1901.

559 STATE OF LOUISIANA, } *ss:*
Parish of Webster, }

I, John T. Watkins, presiding justice of the district court for the second district of Louisiana, composed of the parishes of Bossier and Webster, in said State, do hereby certify that J. H. Tillman, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same clerk of said district court in Webster parish and *ex officio* recorder for said parish in charge of the records of deeds of conveyance of land in said Webster parish, and that said attestation by him is in due form, and that he is the proper officer to make the same.

Witness my hand and seal this 17th day of June, A. D. 1901.

JOHN T. WATKINS, [SEAL.]
Judge 2nd Dist. Court of La. in & for
Webster & Bossier Parishes.

(Stamp.) J. T. W. judge D. C. June 17, 1901.

STATE OF LOUISIANA, } ss:
Parish of Webster, }

I, J. H. Tillman, clerk of the district court for the second district of Louisiana, comprising the parishes of Bossier and Webster in said State, do hereby certify that John T. Watkins whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same presiding justice of said court duly commissioned and qualified.

560 Witness my hand and the seal of said court this 17th day of June, A. D. 1901.

[SEAL.] J. H. TILLMAN,
Clerk of the District Court for the Second District
of Louisiana, at Minden, Webster Parish, La.

Revenue stamp. J. H. T. 6, 17, 1901.

561 COMPLAINANTS' EXHIBIT B.

STATE OF LOUISIANA, }
Parish of Webster. }

Know all men by these presents, that for and in consideration of the sum of four hundred dollars, which I hereby acknowledge that I justly owe Carrie Heath, my lawful wife, for money actually borrowed of her and used, I, Thomas M. Turner of the parish and State aforesaid, have bargained and sold and do bargain, sell and deliver unto the said Carrie Heath my lawful wife of the parish and State aforesaid with full guaranty, all my right, title and interest in and to the following-described land lying and being situated in the parish of Claiborne, State of Louisiana, known as the east half of the northwest quarter of section (21) twenty-one, township (19) nineteen, range (9) W. containing (80) eighty acres more or less. And the northwest quarter of the northwest quarter of section (21) twenty-one, township (19) range (9) nine, containing forty (40) acres more or less. And the southwest quarter of the northwest quarter of section (21) twenty-one, township (19) nineteen, range (9) nine, containing (40) forty acres more or less, with all the improvements thereon or in anywise appertaining thereto. And the title to the same I do hereby warrant and will forever defend. Done and signed at Minden, said parish and State on this the nineteenth day of January A. D. 1870, eighteen hundred and seventy.

THOMAS M. TURNER.

Accepted.
CARRIE HEATH TURNER.

Attest:
LUCY A. HEATH.
F. E. HEATH.

562 Thomas M. Turner, personally *approved* before me this day and being duly sworn, states that he signed the within deed, and saw his wife sign it.

T. M. TURNER.

Sworn to and subscribed before me, the undersigned authority on this 22nd (twenty-second) day of February, A. D. 1870.

SYLVANUS GRAHAM McKENNIE,
Notary Public, Parish Claiborne, State of Louisiana.

Filed Dec. 24th, 1870. J. R. Ramsey, recorder. Duly recorded in conveyance records of Claiborne parish Book "J" on page 324 Dec'r 29th 1870. (L. S.) J. R. Ramsey, recorder. Filed and recorded this 25th day of October, A. D. 1871, and duly stamped according to law. F. E. Heath, recorder.

State of Louisiana,
Parish of Webster.

I, J. H. Tillman, clerk of district court and *ex officio* recorder in and for said Webster parish, Louisiana, do hereby certify that the above and foregoing is a true and correct copy of deed from T. M. Turner to Carrie H. Turner, his wife, made from the records of my office as the same appears duly recorded in conveyance records of Webster parish, Louisiana, volume (1) one folio 90 to 91 inclusive.

563 Given under my hand and seal of office at Minden, Webster parish, La., this 8th day of May, A. D. 1901.

J. H. TILLMAN,
[seal of office.] *Clerk Dist. Court and ex Officio Recorder.*

Revenue stamp. J. H. T. 5, 8, 1901.

State of Louisiana,
Parish of Webster, } *ss:*

I, John T. Watkins, presiding justice of the district court for the second district of Louisiana, composed of the parishes of Bossier and Webster, in said State, do hereby certify that J. H. Tillman, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same clerk of said district court in Webster parish and *ex officio* recorder for said parish in charge of the records of deeds of conveyance of land in said Webster parish, and that said attestation by him is in due form, and that he is the proper officer to make the same.

Witness my hand and seal this 17th day of June A. D. 1901.

[SEAL.] JOHN T. WATKINS, [SEAL.]
Judge 2nd Dist. Court, for the Parishes of Webster and the Parish of Bossier, Louisiana.

Revenue stamp. J. T. W. judge D. C. June 17, 1901.

564 STATE OF LOUISIANA, }
Parish of Webster, } *ss:*

I, J. H. Tillman, clerk of the district court for the second district of Louisiana, comprising the parishes of Bossier and Webster in said State, do hereby certify that John T. Watkins, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same presiding justice of said court duly commissioned and qualified.

Witness my hand and the seal of said court this 17th day of June, A. D. 1901.

[SEAL.] J. H. TILLMAN,
Clerk of the District Court for the Second District of Louisiana, at Minden, Webster Parish, Louisiana.

Revenue stamp. J. H. T. 6, 17, 1901.

565 COMPLAINANTS' EXHIBIT C.

STATE OF LOUISIANA, }
Parish of Webster. }

Be it known by these presents that Thomas Marshal Turner exhibiting power of attorney from his wife Carrie Turner and acting as her duly authorized agent and attorney-in-fact, personally came and appeared before me, John H. Tillman, d'y clerk, D. C. & *ex officio* notary public in and for Webster parish, Louisiana, duly qualified, and declared unto me the said notary and Joseph W. Berry and James W. Reegan, lawful and competent male witnesses of full age and residents of Webster parish, Louisiana, that as duly authorized agent of his wife, Carrie Turner, under a power of attorney duly recorded, he has bargained, sold and delivered, and does by these presents sell, transfer and deliver unto William M. Phillips, of Webster parish, La., who is also present and accepting for himself, the following-described property, to wit: The N. W. ¼ of section twenty-one (21) of township nineteen and range (9) nine, containing one hundred and sixty acres more or less with all improvements thereon and appurtenances thereto belonging and with full and perfect warranty of title and possession duly given. The consideration for this sale is the sum and price of one thousand dollars, of which

five hundred dollars is paid cash, the receipt of which is hereby acknowledged, the balance due being represented by one promissory note of the vendee for the sum of five hundred dollars, with eight per cent. per annum interest thereon from date hereof and payable
to the order of Carrie Turner on or before the first day of
566 January, A. D. 1894 eighteen hundred and ninety-four, which
note is duly paraphed to identify it with this act. To better secure the payment of the unpaid price of the property deeded, the vendee consents and the vendor retains the vendor's lien and mortgage on the property deeded and the vendee further binds himself and agrees not to alienate or mortgage the said property to the prejudice of the rights of the vendor.

The taxes due on the property being paid and the mortgage certificate being waived by the parties, I, the said notary, have caused the parties and witnesses to sign this act with me on this 27th day of January, A. D. 1893.

(Signed)

CARRIE TURNER,
By T. M. TURNER, *Agent.*

Attest:
J. W. BERRY.
J. W. REAGAN.

Accepted.

W. M. PHILLIPS.
J. H. TILLMAN,
D'y Clerk, D. C., & ex Officio N. P., Webster P'h, La.

Endorsed: Filed for record Jan'y 27/93 and a true record made this April 12/93. J. H. Tillman, d'y clerk, D. C. & *ex officio*, recorder.

STATE OF LOUISIANA,
Parish of Webster.

I, J. H. Tillman, clerk of dist. court and *ex officio* re-
567 corder in and for Webster p'h La. do hereby certify that the
above and foregoing two pages is a true and correct copy of the deed from Carrie Turner, per T. M. Turner, agent, made from the records of my office, as same appears recorded in conveyance records of Webster p'h vol. 7, folio 4 to 5 inclusive.

Given under my hand and seal of office at Minden, La., this 8th day of May, A. D. 1901.

[Seal of Clerk's Office.]

J. H. TILLMAN,
Clerk Dist. Court, & ex Officio Recorder.

STATE OF LOUISIANA,
Parish of Webster, } *ss:*

I, John T. Watkins, presiding justice of the district court for the second district of Louisiana, composed of the parishes of Bossier and Webster, in said State, do hereby certify that J. H. Tillman, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same clerk of said district court in Webster parish and *ex officio* recorder for said parish in charge of the records of deeds of conveyance of land in said Webster parish, and that said attestation by him is in due form, and that he is the proper officer to make the same.

Witness my hand and seal this 17th day of June, A. D. 1901.

Revenue stamp.

JOHN T. WATKINS, [SEAL.]
Judge 2d Judicial District Court in and for
Webster & Bossier Parishes, Louisiana.

568 STATE OF LOUISIANA, } *ss:*
Parish of Webster, }

I, J. H. Tillman, clerk of the district court for the second district of Louisiana, comprising the parishes of Bossier and Webster in said State, do hereby certify that John T. Watkins, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same presiding justice of said court duly commissioned and qualified.

Witness my hand and the seal of said court this 17th day of June, A. D. 1901.

[Seal of Clerk's Office, Webster Parish, La.]

J. H. TILLMAN,
Clerk of the District Court for the Second District of
Louisiana, at Minden, Webster Parish, Louisiana.

569

COMPLAINANTS' EXHIBIT D.

PARISH OF WEBSTER, } *ss:*
State of Louisiana, }

I, John H. Tillman, clerk of district court & *ex officio* recorder in and for the parish and State aforesaid, and having official cognizance of the fact, do hereby certify that the records of this office show that no appraisement or inventory of the estate of the minor children Erle H. Turner, Wilmer Turner, Ashby Turner and Lunette Turner children of Thomas M. Turner and Carrie Heath Turner his wife, formerly of said parish and State, has ever been made.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, this ninth day of May, 1901.

[Seal of Clerk's Office, Parish of Webster, La.]

J. H. TILLMAN,
Clerk Dist. Court & ex Officio Recorder.

STATE OF LOUISIANA, }
Parish of Webster, } *ss:*

I, John T. Watkins, presiding justice of the district court for the second district of Louisiana, composed of the parishes of Bossier and Webster, in said State, do hereby certify that J. H. Tillman, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same clerk of said district court in Webster parish and *ex officio* recorder for said parish in charge of the records of appraisements and inventories of the estates of minor children in said Webster parish, and that said attestation by 570 him is in due form and that he is the proper officer to make the same.

Witness my hand and seal this 17th day of June, A. D. 1901.

JOHN T. WATKINS, [SEAL.]
Judge Dist. Court.

STATE OF LOUISIANA, }
Parish of Webster, } *ss:*

I, J. H. Tillman, clerk of the district court for the second district of Louisiana, comprising the parishes of Bossier and Webster in said State, do hereby certify that John T. Watkins, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same presiding justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 17th day of June, A. D. 1901.

[Seal of the Clerk's Office, Parish of Webster, La.]

J. H. TILLMAN,
Clerk of the District Court for the Second District of Louisiana, at Minden, Webster Parish, Louisiana.

(Revenue stamps.)

571

COMPLAINANTS' EXHIBIT E.

PARISH OF WEBSTER, }
State of Louisiana, } *ss:*

I, John H. Tillman, clerk of district court & *ex officio* recorder in and for the parish and State aforesaid, and being custodian of the mortgage books of said parish, and having official cognizance of the fact, do hereby certify that the mortgage books of this parish show that no inventory or appraisement of the estate of the minors Erle H. Turner, Wilmer Turner, Ashby Turner and Lunetter Turner, children of Thomas M. Turner and Carrie Heath Turner his wife, formerly of this parish and State, has ever been recorded in the mortgage books of said parish.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, this ninth day of May, 1901.
(Revenue stamp.)

[Seal Clerk's Office, Parish of Webster, La.

J. H. TILLMAN,
Clerk Dist. Court.

STATE OF LOUISIANA,
Parish of Webster.

I, John T. Watkins, presiding justice of the district court for the second district of Louisiana, composed of the parishes of Bossier and Webster, in said State, do hereby certify that J. H. Tillman, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same clerk of said district court in Webster parish and *ex officio* recorder for said parish in charge of the records of mortgages and of the mortgage books of the said Webster parish, and that said attestation by him is in due form and that he is the proper officer to make the same. 572

Witness my hand and seal this 17th day of June, A. D. 1901.
(Revenue stamp.)

JOHN T. WATKINS, [SEAL.]
Judge 2d D. C., Webster & Bossier Phs., La.

STATE OF LOUISIANA, } *ss:*
Parish of Webster,

I, J. H. Tillman, clerk of the district court for the second district of Louisiana, comprising the parishes of Bossier and Webster in said State, do hereby certify that John T. Watkins, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same presiding justice of said court duly commissioned and qualified.

Witness my hand and the seal of said court this 17th day of June, A. D. 1901.
(Revenue stamp.)

[Seal of Clerk's Office, Parish of Webster, La.]

J. H. TILLMAN,
Clerk of the District Court for the Second District of Louisiana, at Minden, Webster Parish, Louisiana.

573 COMPLAINANTS' EXHIBIT F.

STATE OF TEXAS,
County of Grayson,

Know all men by these presents: That Joseph Greer and S. E. Greer his wife of the county of Grayson and State of Texas in consideration of the sum of twenty-five hundred dollars, paid and secured to be paid by T. M. Turner as follows: cash in hand paid have granted, sold and conveyed, and by these presents do grant, sell and convey, unto the said T. M. Turner of the county of Wilbarger and State of Texas, all that certain lot, tract or parcel of land described as follows: All of section twenty-six "26" block nine "9" H. & T.C.R.R. survey in Wilbarger county, Texas. The said T. M. Turner is to assume all payments, obligations and to be subject to all the fines, forfeitures and penalties imposed by the State of Texas in regard to the purchase of school land, together with all and singular the rights, members hereditaments and appurtenances to the same belonging or in anywise incident or appertaining.

To have and to hold all and singular the said premises unto the said T. M. Turner his heirs and assigns, forever. And we do hereby bind ourselves, heirs, executors and administrators to warrant and forever defend, all and singular the said premises unto the said T. M. Turner, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

574 Witness our hands this 25th day of November, A. D. 1889.

JOSEPH GREER.
S. E. GREER.
T. M. TURNER.

Signed, sealed and delivered in the presence of—

—— ——.

THE STATE OF TEXAS, }
County of Grayson. }

Before me, J. W. Pattie, a notary public in and of Grayson in the State of Texas, on this day personally appeared Jos. Greer, T. M. Turner and S. E. Greer wife of said Jos. Greer *both* known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. And the said S. E. Greer having been examined by me privily and apart from her husband, and having the same by me fully explained to her, she, the said S. E. Greer acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this 25th day of November, A. D. 1889.

J. W. PATTIE,
[SEAL.] *Notary Public, Grayson County, Texas.*

Filed for record, April 15th, 1890, at 10 o'clock a. m., and recorded April 17th, 1890 at 10.40 o'clock a. m.

L. N. PERKINS,
County Clerk, Wilbarger County, Texas.
575 By Z. HERRINGTON, *Deputy.*

(Back of deed:) Certified copy of warranty deed. Joseph Greer *et ux.* to T. M. Turner. Deed.
Recording fees, $1.50.

STATE OF TEXAS,
County of Wilbarger, } *ss:*

I, W. B. Townsend, clerk of the county court of Wilbarger county, Texas, do hereby certify that the annexed and foregoing is a true and correct copy of the original deed from Joseph W. Greer and S. E. Greer to T. M. Turner, as the same appears of record in volume 13, page 521 of the deed records of my office.

Given under my hand and seal of said court at office in the town of Vernon and county of Wilbarger, Texas, this 8th day of June, A. D. 1901.

W. B. TOWNSEND,
[SEAL.] *Clerk County Court of Wilbarger County, Texas.*

Revenue stamp. W. B. T. 6, 8, 1901.

576 STATE OF TEXAS,
County of Wilbarger, } *ss:*

I, J. A. Nabers, presiding justice of the county court of Wilbarger county, Texas, do hereby certify that W. B. Townsend, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same, clerk of the county court of Wilbarger county, Texas, in charge of the records of deeds of conveyance of land in said county, and that said attestation by him is in due form and that he is the proper officer to make the same.

Witness my hand and seal this 8th day of June, A. D. 1901.

J. A. NABERS. [SEAL.]

Revenue stamp. J. A. N. 6, 8, 1901.

STATE OF TEXAS,
County of Wilbarger, } *ss:*

I, W. B. Townsend, clerk of the county court of Wilbarger county, Texas, do hereby certify that J. A. Nabers, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same presiding justice of said court duly commissioned and qualified.

Witness my hand and the seal of said court, this 8th day of June, A. D. 1901.

[SEAL.] W. B. TOWNSEND,
Clerk County Court of Wilbarger County, Texas.

Revenue stamp. W. B. T. 6, 8, 1901.

577 COMPLAINANTS' EXHIBIT G.

File 20591.

Wilbarger county,
School land.
T. M. Ferguson,
640 acres,
All section No. 26
H. & T. C. R'y Co.,
No. certificate 993, block 9.
For transfer see file 19,565
Act April 1883.
Forfeited 8–20–97.
Non-payment interest
Mgl. 20591 Abst. 737.
Dry graz. Vol. 11.
Ftd. " 21.

Contents.

No. 1. Application and sketch.
No. 2. Receipt H. Receipt.
No. 3. Receipt field-note W.
No. 4. Transfer.
No. 5. Rut. 7, 12, '87.
Fol. (71, 87 in lead pencil) C. D. W.
No. 6. Rec'pt, July 25, '88.
No. 7. Transfer 7, 8, '89 C. D. W.
No. 8. Letter in regard to cert. No.
No. 9. Transfer, 9, 9, '90 10, 4, '89.
C. D. W. C. D. W.

578 Nos. 10, 11. Treas. rec'pt.
Nos. 12, 13. Treas. rec'pt.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *June* 17*th*, 1901.

I, Charles Rogan, commissioner of the general land office of the State of Texas, do hereby certify that the above and foregoing is a true and correct copy of the writing as the same appears on the front and the back of the file-wrapper of file No. 20591 in the name of T. M. Fergeson, showing the official forfeiture of section No. 26, cert. No. 993, block 9, grantee H. — T. C. R'y Co., originally sold to said T. M. Fergeson under act of 1883.

In testimony whereof, I hereunto set my hand and affix the impress of the seal of said office, at Austin, Texas, this 17th day of June, A. D. 1901.

[SEAL.]

CHARLES ROGAN,
Com. Gen'l Land Office, State of Texas.

Revenue stamp. C. R. 6, 17, '01.

DEPARTMENT OF STATE, STATE OF TEXAS.

I, John G. Tod, secretary of state of the State of Texas, do hereby certify that Charles Rogan, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same, commissioner of the general land office of the State of Texas, and official custodian of the records of said office, and 579 that said attestation by him is in due form, and that he is the proper officer to make the same.

Witness my hand and the great seal of the State of Texas this 17th day of June, A. D. 1901.

JOHN G. TOD, [SEAL.]
Secretary of State.

Revenue stamp. J. G. T. 6, 17, 1901.

580 COMPLAINANTS' EXHIBIT H.

No. 4.

Classification and Appraisement.

School lands, Wilbarger (continued) county.

Part of section.	Section.	Block.	Certificate.	Original grantee.
All..................	26	9	993	H. & T. C. R. R. Co.

Watered or dry.	Agricultural, grazing, or timber.	No. of acres.
Dry.	Graz.	640

Price per acre.	Land, timber only.	Remarks.	File.
1 00		T. M. Fergeson.	20591

Examined and approved as the original classification and appraisement of school lands in Wilbarger county sold under act of 1883 and forfeited to the State on the 20th day of August 1897, for the non-payment of interest, this day placed on the market as herein shown, made under act of 1897.

In testimony whereof, I hereunto set my hand and cause to be affixed the seal of the General Land Office; done at Austin, Texas, this the 14th day of Sept. A. D. 1897.

ANDREW J. BAKER,
[SEAL.] *Commissioner General Land Office.*

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *June* 17, 1901.

581 I, Charles Rogan, commissioner of the general land office of the State of Texas, do hereby certify that the above and foregoing is a true and correct copy from the classification and appraisement record under the act of 1897 kept as an archive of this office of the classification and appraisement of section No. 26, certificate No. 993, block No. 9, grantee H. & T. C. R'y Co., 640 acres of land in Wilbarger county, Texas, together with the certificate of approval by Andrew J. Baker, commissioner of the general land office of the State of Texas, attached to said classification and appraisement.

In testimony whereof, I hereunto set my hand, and affix the impress of the seal of said office, at Austin, Texas, this 17th day of June, A. D. 1901.

[SEAL.] CHARLES ROGAN,
Com'r Gen'l Land Office, State of Texas.

Revenue stamp. C. R 6. 17. 1901.

STATE OF TEXAS, }
County of Travis. }

I, John G. Tod, secretary of state of the State of Texas, do hereby certify that Charles Rogan, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same, commissioner of the general land office of the State of Texas, and official custodian of the records of said office, and that said attestation by him is in due form and that he is the
582 proper officer to make the same.

Witness my hand and the great seal of the State of Texas, this 17th day of June, A. D. 1901.

[SEAL.] JOHN G. TOD,
Secretary of State.

Revenue stamp. J. G. T. June 17, 1901.

583 ## COMPLAINANTS' EXHIBIT I.

THE STATE OF TEXAS,
County of Wilbarger.

Know all men by these presents: That we, T. M. Turner and wife Mrs. Carrie Turner, of the county of Wilbarger, State of Texas, in consideration of the sum of five thousand six hundred and twenty-four and no/100 dollars, to us in hand paid by Frank S. Lackett as follows, to wit: Twenty-five hundred dollars evidenced by note payable thirty days after date: two thousand and ninety-eight and 6/100 dollars evidenced by note due twelve months after date bearing 8 per cent. interest from date; four hundred and one and 40/100 dollars evidenced by vendee assuming the payment of a note and deed of trust owned by I. G. Showers against one-quarter of the land herein conveyed for $391, dated December 21, 1900, and six hundred and twenty-four dollars evidenced by vendee assuming this amount due the State of Texas on the land herein conveyed, have granted, sold and conveyed, and by these presents do grant, sell and convey, unto the said Frank S. Lackett of the county of Wilbarger, State of Texas, all that certain section of land described as follows: to wit—Being 640 acres and being all of school section No. twenty-six (26) in block No. nine (9) certificate No. — H. & T. C. R. R. Co., surveys in Wilbarger county, Texas, and being about eight miles S. W. of Vernon, Texas.

To have and to hold the above-described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Frank S. Lackett and his heirs and
584 assigns, forever. And we do hereby bind ourselves, our heirs,
executors and administrators to warrant and forever defend, all and singular, the said premises unto the said Frank S. Lackett and his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

But it is expressly agreed and stipulated that the vendor's lien is retained against the above-described property, premises and improvements until the above-described notes and all interest thereon are fully paid, according to their face and tenor, effect and reading, when this deed shall become absolute.

Witness our hands at Vernon, Texas, this 27th day of March, A. D. 1901.

T. M. TURNER.
CARRIE TURNER.

Signed, sealed and delivered in presence of—
—— ——.

$6.00 stamped and cancelled.

Filed for record April 29th, 1901, at 5.30 o'clock p. m.

W. B. TOWNSEND,
County Clerk, Wilbarger County, Texas,
By F. L. MASSIE, *Dep'y.*

THE STATE OF TEXAS, }
County of Wilbarger. }

Before me, W. B. Townsend, county clerk in and for Wilbarger county, Texas, on this day personally appeared T. M. Turner and Carrie Turner, wife of said T. M. Turner known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the pur-
585 poses and consideration therein expressed. And the said Carrie Turner wife of said T. M. Turner having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Carrie Turner acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of said office, this 27th day of March, A. D. 1901.

W. B. TOWNSEND,
[SS.] *County Clerk, Wilbarger County, Texas.*

STATE OF TEXAS, } *ss:*
County of Wilbarger, }

I, W. B. Townsend, clerk of the county court of Wilbarger county, Texas, do hereby certify that the annexed and aforegoing is a true and correct copy of the original deed from T. M. Turner and wife Carrie Turner to Frank S. Lockett, as the same appears of record in volume 38 page 476 of the deed records of my office.

Given under my hand and seal of said court at office in the town of Vernon and county of Wilbarger, Texas, this 8th day of June, A. D. 1901.

[SEAL.] W. B. TOWNSEND,
Clerk County Court of Wilbarger County, Texas.

Revenue stamp. W. B. T. 6, 8, 1901.

586 STATE OF TEXAS, } *ss:*
County of Wilbarger, }

I, J. A. Nabers, presiding justice of the county court of Wilbarger county, Texas, do hereby certify that W. B. Townsend, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same, clerk of the county court of Wilbarger county, Texas, in charge of the records of deeds of conveyance of land in said county, and that said attestation by him is in due form and that he is the proper officer to make the same.

Witness my hand and seal this 8th day of June, A. D. 1901.

J. A. NABERS. [SEAL.]

Revenue stamp. J. A. N. 6, 8, 1901.

STATE OF TEXAS, }
County of Wilbarger, } *ss:*

I, W. B. Townsend, clerk of the county court of Wilbarger county, Texas, do hereby certify that J. A. Nabers, whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same presiding justice of said court duly commissioned and qualified.

Witness my hand and the seal of said court this 8th day of June, A. D. 1901.

W. B. TOWNSEND,
[SEAL.] *Clerk County Court of Wilbarger County, Texas.*

Revenue stamp. W. B. T. 6, 8, 1901.

587 COMPLAINANTS' EXHIBIT K.

THE STATE OF TEXAS, }
County of Wilbarger. }

Know all men by these presents: That we, T. M. Turner and Mrs. Carrie Turner, of the county of Wilbarger and State of Texas, in consideration of the sum of nine hundred and twenty-three dollars, to us in hand paid by R. C. Neal by the cancellation of our indebtedness to him in the above amount have granted, sold and conveyed, and by these presents do grant, sell and convey, unto the said R. C. Neal of the county of Wilbarger, State of Texas all that certain lot of lands described as follows: The S. E. ¼ one-fourth of block No. (26) twenty-six, Texas Town Site Co.'s addition to the town of Vernon, in Wilbarger Co., Texas.

To have and to hold the above-described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said R. C. Neal and his heirs and assigns, forever. And we do hereby bind ourselves and our heirs, executors and administrators to warrant and forever defend, all and singular, the said premises unto the said R. C. Neal and his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Witness our hands, at Vernon, Texas, this — day of August, A. D. 1895.

T. M. TURNER.
CARRIE TURNER.

Signed, sealed and delivered in presence of—
—— ——.

588 THE STATE OF TEXAS, }
County of Wilbarger. }

Before me, James R. Talbert, county judge in and for Wilbarger county, Texas, on this day personally appeared T. M. Turner and Mrs. Carrie Turner wife of said T. M. Turner known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. And the said Mrs. Carrie Turner wife of said T. M. Turner having been examined by me privily and apart from her husband, and having the same fully explained to her, the said Mrs. Carrie Turner acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this 5 day of August, A. D. 1895.

JAMES R. TALBERT,
[SEAL.] *County Judge of Wilbarger County, Texas.*

589 Filed for record the 5th day of August, 1895, at 5 o'clock and 30 minutes, p. m. Recorded August 7th, 1895, at 9 o'clock a. m.

E. L. McHUGH,
Co. Cl'k, Wilbarger County, Texas,
By J. C. HANEY, *Deputy.*

STATE OF TEXAS,
County of Wilbarger, } *ss:*

I, W. B. Townsend, clerk of the county court of Wilbarger county, Texas, do hereby certify that the annexed and aforegoing is a true and correct copy of the original deed from T. M. Turner and Carrie Turner to R. C. Neal, as the same appears of record in volume 28, page 100 of the deed records of my office.

Given under my hand and seal of said court at office in the town of Vernon and county of Wilbarger, Texas, this 8th day of June, A. D. 1901.

W. B. TOWNSEND,
[SEAL.] *Clerk County Court of Wilbarger County, Texas.*

Revenue stamp. W. B. T. 6, 8, 1901.

STATE OF TEXAS,
County of Wilbarger, } *ss:*

590 I, J. A. Nabers, presiding justice of the county court of Wilbarger county, Texas, do hereby certify that W. B. Townsend, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, clerk of the county court of Wilbarger county Texas, in charge of the records of deeds of conveyance of land in said county, and that said attestation by him is in due form and that he is the proper officer to make the same.

Witness my hand and seal this 8th day of June, A. D. 1901.

J. A. NABERS. [SEAL.]

Revenue stamp. J. A. N. 6, 8, 1901.

STATE OF TEXAS, } ss:
County of Wilbarger, }

I, W. B. Townsend, clerk of the county court of Wilbarger county, Texas, do hereby certify that J. A. Nabers whose genuine signature is subscribed to the foregoing certificate was at the time of signing and attesting the same presiding justice of said court duly commissioned and qualified.

Witness my hand and the seal of said court, this 8th day of June, A. D. 1901.

W. B. TOWNSEND,
[SEAL.] *Clerk County Court of Wilbarger County, Texas.*

Revenue stamp. W. B. T. 6, 8, 1901.

591 COMPLAINANTS' EXHIBIT L.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL.
vs. } No. 20552. In Equity.
JOSEPH J. DARLINGTON ET AL.

It is hereby stipulated and agreed by and between counsel for the complainants and the defendants that the following exhibits offered in evidence in this cause, to wit: exhibits marked "Ex. Erle H. Turner" and numbered respectively Nos. 1, 2, 3, 4, 5, 6, 7 and 8 are the genuine letters of the defendants' testator, Philip A. Tracy, in the genuine handwriting of said Philip A. Tracy and bearing his signature;

That the following exhibits, to wit: exhibits marked "Ex. Erle H. Turner" and marked respectively Nos. 9, 10, 11 and 12, and exhibits marked "Ex. Erle H. Turner Redirect No. 1" are parts of genuine letters in the handwriting of said Philip A. Tracy;

That the exhibits marked "Ex. Erle H. Turner" and numbered respectively Nos. 15, 16, 17, 18 and 19 are envelopes addressed to Erle H. Turner in the genuine handwriting of said Philip A. Tracy;

That the following endorsement, to wit:

"Notes belonging to S. H. Turner," "1888" on the envelope marked "Ex. Erle H. Turner No. 21" is in the genuine handwriting of said Philip A. Tracy;

That the exhibit marked "Ex. Erle H. Turner No. 22" is in the genuine handwriting of said Philip A. Tracy, with the exception of the lead-pencil footings in figures and the abbreviation "am't for'd" on the second sheet thereof and the memorandum in lead pencil at the foot of second sheet consisting of the words "This list was given by Mr. Tracy as a list of property of S. H. Turner in his hands." 592

That the exhibit marked "Ex. E. H. T. Cross-ex. No. 9" is in the genuine handwriting of Philip A. Tracy, except the signature of Erle H. Turner thereto appended, which signature is the signature of Erle H. Turner.

That the names Erle H. Turner and Philip A. Tracy in lead pencil on the exhibit marked "Ex. E. H. T. Cross-ex. No. 10" are in the genuine handwriting of said Philip A. Tracy.

That the signature of Philip A. Tracy to the exhibit marked "Ex. Erle H. Turner No. 13" is the genuine signature of said Philip A. Tracy.

That the exhibits offered in evidence in this cause and marked "Ex. Miss Turner" numbered respectively Nos. 1, 2, 3, 4 and 5 are each genuine letters of said Philip A. Tracy, bearing his genuine signature, the said exhibits marked "Ex. Miss Turner" and numbered respectively No. 2 and No. 3 being wholly in the handwriting of said Philip A. Tracy, and the other of said exhibits being in typewriting, but bearing the genuine signature of said Philip A. Tracy. That the lead-pencil memorandum on the back of the second sheet of exhibit marked "Ex. Miss Turner No. 5" consisting of the words "This letter was in answer to one asking Mr. Tracy to let Erle have money while he was studying for the civil-service examination" is in the handwriting of Mrs. Thomas M. Turner, the mother of complainants, and the memorandum in lead pencil thereunder of the
593 words "My mother wrote this" is in the handwriting of the complainant, Wilmer Turner.

That the exhibit marked "Ex. W. E. E. No. 1" is a genuine letter in the genuine handwriting of Philip A. Tracy and bearing his signature.

That the exhibit marked "Ex. T. M. T. No. 1" is in the genuine handwriting of said Philip A. Tracy.

That the exhibit marked "Ex. T. M. T. No. 2" is in the genuine handwriting of Philip A. Tracy, except the words in the receipt "under the will of S. H. Turner, deceased, T. M. Turner, natural tutor and agent for my minor children," which words are in the handwriting of Thomas M. Turner, the father of the complainants.

That the endorsement on the envelope marked "Ex. T. M. T. No. 2 A" of the words "Estate of S. H. Turner" is in the genuine handwriting of Philip A. Tracy.

That the exhibits marked "Ex. T. M. T." and numbered respectively Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 are the genuine letters of the said Philip A. Tracy, in the genuine handwriting of said Philip A. Tracy, and bearing his genuine signature; and the exhibits marked "Ex. T. M. T." and designated respectively No. 4–*a*, No. 5–*a*, No. 6–*a*, No. 7–*a*, No. 8–*a*, No. 10–*a*, No. 11–*a*, No. 12–*a*, and No. 13–*a*, are envelopes containing addresses in the genuine handwriting of said Philip A. Tracy.

CARLISLE & JOHNSON,
Counsel for Complainants.
NATH'L WILSON,
Counsel for Defendants.

July 12, 1901.

Filed April 21, 1902.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL. *vs.* J. J. DARLINGTON and GEORGE W. GRAY, Executors.	In Equity. No. 20552.

WASHINGTON, D. C.,
FRIDAY, *November* 29, 1901—11.30 o'clock a. m.

Met pursuant to agreement at the office of Nathaniel Wilson, Pacific building, Washington, D. C.

Present on behalf of the complainants, Mr. Johnson.

Present on behalf of the defendants, Messrs. Nathaniel Wilson and Clarence Rich Wilson.

Present also, George W. Gray, Esq., one of the defendants, in person.

FRANCIS L. SHIPLEY, a witness called by and on behalf of the defendant, having been first duly sworn, deposes and says as follows:

By Mr. N. WILSON:

Q. Please state your name, age, and occupation? A. My name is Francis L. Shipley; age, sixty-seven. I am doing nothing much at present. I used to be a dry-goods salesman.

595 Q. Did you know Mr. Philip A. Tracy, formerly a clerk in the Post-Office Department, and if so, how long had you known him at the time of his death? A. I knew him well—knew him for twenty years.

Q. Where was he during that time? A. When I first knew him he was a book-keeper for Mr. John T. Mitchell.

Q. Were you in the employ of the same firm? A. No; I was with May & Gray, down on the avenue. Afterwards he was in the post-office for a number of years. I knew him all those years.

Q. In the General Post-Office? A. Yes, in the General Post-Office.

Q. As a clerk? A. As a clerk, yes, sir; a book-keeper.

Q. When and where did you last see him before his death? A. At the Providence hospital. I took him over there when he was ill. He was taken ill at the Riggs house, and the doctor said he must be taken out of there, and I went to work and had an ambulance, and took him over there. He was there for about three weeks, to the best of my knowledge, ill all the time, or pretty much all the time.

Q. Did you see him there at the hospital? A. Oh, yes; three or four times a week.

Q. When did you see him last before his death? A. I saw him, I think it was the day before he died. I was over there some time during the day, and then he was taken worse in the night and died before morning. The Sister telephoned to me to come down, that he was dead.

Q. What did you do, after his death, in respect of—— A. I went right down, and they handed me that paper, to notify the executors—to notify Mr. Gray.

596 Q. Examine the paper and the envelope containing it, now shown you, and state if that is the paper you refer to? A. Yes sir; I can testify to that.

Q. You identify the envelope, and likewise the paper? A. Yes, sir.

The papers shown to the witness are offered in evidence by counsel for the defendants, marked "Shipley Ex. 1" and "Shipley Ex. 2," and are in the words, marks and figures following (the originals being returned to the executors, with the understanding that they will be produced when required).

(SHIPLEY EX. 1.)

Riggs house, Washington, D. C.

Opposite the Treasury, one block from the White House.

O. G. Staples, proprietor.

Open at once in case of sudden death or accident.

SISTER LOUISE.

(SHIPLEY EX. 2.)

Riggs house, O. G. Staples, proprietor.

Opposite U. S. Treasury, one block from the White House.

WASHINGTON, D. C., *Feb.* 12, 1898.

If anything happens to me notify Geo. W. Gray, 923 I St., N. W., at once and also Thompson and Slater in Glover building, F St., bet., 14th & 15th N. W.

I own a lot in Oak Hill cemetery and Mr. Barker, the undertaker on 11th St., knows all about it.

Also notify F. L. Shipley, room 70, Corcoran building, and 597 Rev. Dr. McKim of Epiphany church.

PHILIP A. TRACY.

Dr. Johnston, 1603 K, is my physician. Notify James W. Tyler, No. 925 E St. N. W.

By Mr. NATHANIEL WILSON:

Q. State by whom these papers were given to you. A. By Sister Louise.

Q. Where? A. At the Providence hospital.

Q. By Sister Louise? A. Yes, sir; she is dead now.

Q. How soon after his death? A. The next morning. He died during the night—next morning.

Q. Did you visit the hospital? This was at the hospital? A. Yes, sir; at the hospital.

Q. What, if any papers did you receive from Sister Louise? A. It was all in an envelope—one envelope—and I turned them right over to Mr. Gray.

Q. Was Mr. George Gray, one of the executors, there when you received them? A. Yes, sir.

Q. And what did you do with them? A. I say, I turned them right over to him. He was there in the room.

Q. Were the papers that you received all in one envelope? A. All in one envelope.

Q. Do you know what the envelope contained? A. Not at all.

598 Q. Was anything shown to you by Mr. Gray? A. To the best of my knowledge at the time he showed me the papers written by Mr. Tyler—to the best of my knowledge.

Q. You did not open the envelope yourself? A. No, I didn't open it at all.

Q. But you handed it to Mr. Gray? A. Yes; and as well as I remember he looked at the paper while I was there—the will.

Q. What afterwards became of the will, the paper, or the contents of the envelope, you do not know? A. I do not know.

Q. Will you examine the envelope now shown you, and the paper, marked respectively "Shipley Exhibits 3 and 4," and state if you identify them as papers that were in the envelope to which you have referred as having been shown you at the time and place mentioned, by Mr. Gray? A. I do.

Mr. N. WILSON: The envelope and the paper marked Shipley Exhibits 3 and 4, are offered in evidence on behalf of the defendants.

Mr. JOHNSON: The complainant objects to them as being incompetent to establish any fact stated in the paper itself, except in so far as it may be an admission by the testator against his interest.

The papers above referred to, "Shipley Ex. 3" and "Shipley Ex. 4," are in the words, marks and figures following, to wit:

599 (SHIPLEY EX. # 3.) (ENVELOPE.)

"TO MY EXECUTORS."

(SHIPLEY EX. # 4.)

"WASHINGTON, D. C., —— —, 1898.

To the executors of my last will and testament:

Some time in 1871, Silas H. Turner of Virginia, whom I had known for a long time, of his own volition and without solicitation from me, came to the city and asked me to aid him in investing some twelve thousand dollars ($12,000) in real-estate notes. I consented and in a few weeks the whole amount was invested, and he took the notes home with him. The interest was payable semi-annually, and, for a time, he sent me notes by mail about the time the interest was due so that it could be credited on the notes to satisfy the maker. This become irksome and, after a time, he brought me the notes, keeping a list of them, and asked me to keep them to save him the trouble of sending them to me by mail whenever the interest was due. I kept the notes in an envelope with his name upon it, and about twice a year sent him a memorandum of interest paid, and, when the amount reached several hundred dollars I would buy another note, and send him a memorandum of the same. Also when a note matured and was paid, I would buy another note, unless he needed the money, which he rarely did, and send him a 600 memorandum of it. This condition continued until 1888, when he died in Virginia leaving his entire estate to the three minor children of his brother then living in Louisiana. In his will he named me to settle up the estate and divide the money among the children; but, as the laws of Virginia require two witnesses to a will and says neither of them shall be an executor, I could not qualify, and as the father if appointed could not have given the bond, I handed him the package of notes, advised him to deposit them in the Second National Bank of Washington, D. C. which he did, and agreed to look after them and have them all paid, he being out of the city. His other relations, a sister some nephews and nieces, were much displeased with the will, and threatened to attempt to have it set aside, but have not done so. The father, a good, honest man, took the money or most of it, went to Texas and bought a farm, and was doing well until the panic of 1893 came on. Since then they have had a hard time, getting little or nothing for their farm products, and have written me some heart-rending letters wishing they had left the money here, the children are of age but of course the father could not pay them their parts of the estate, and though not a word has been said about it, I thought perhaps after my death, if they hear of it in time, some of them might attempt to hold me responsible, and if they should make such an attempt, I

hereby authorize and direct my executors to employ the best counsel in the city to defend my estate in the district courts and in the Supreme Court of the United States, if it be necessary to appeal the case to that court, and to pay all costs and lawyers' fees out of my estate. I suppose some one would have to qualify as adminis-
601 trators under the will before any action could be taken. My turning the property over to the father helped to keep it in the possession of those to whom it was left, and to discourage and shut out the dissatisfied relatives, for if any one had qualified the matter would have been open for a year, and they would undoubtedly have made an*d* attempt to have the will set aside. This is a plain statement of the case intended for the private ears of my executors."

By Mr. N. WILSON:

Q. I understand you to say that you never afterwards saw or had any knowledge of the contents of the envelope? A. No, sir.

Cross-examination.

By Mr. JOHNSON:

Q. Mr. Shipley, the firm of May & Gray, by whom you were employed, were dry-goods merchants on the avenue? A. Yes, sir.

Q. And Mr. Gray, of that firm, is the executor in this proceeding? A. Yes, sir.

Q. I understood that both the envelopes and their contents, which were offered in evidence, were given to you at the hospital by Sister Louise, the sister in charge after Mr. Tracy's death? A. Yes, sir; she brought them in.

Q. You had never seen those papers prior to that time? A. No, sir; I never knew anything about them.

Q. Do you remember whether or not they were sealed? A. I do not. To the best of my knowledge they were not. I do not remember. I simply took them from Sister Louise and handed them over to Mr. Gray.

602 Q. He was present at the time? A. I don't know as he was present when she handed them to me, but I gave them right over to him.

Q. The delivery was made at the hospital? A. Yes, sir; right at the hospital.

Q. Did you know, at that time, that Mr. Gray was one of Mr. Tracy's executors? A. Yes; I was informed that he was.

Q. You had been informed before that time? A. I didn't know it before, no, sir.

Q. Did you know Mr. Tracy's handwriting? A. Yes, sir.

Q. Is this exhibit, the letter dated February 12, in his handwriting? A. It is in his handwriting, yes, sir.

Q. Is this envelope, Exhibit No. 1, containing the words "Open at once in case of sudden death or accident" in his handwriting? A. That is his handwriting, sir.

Q. And on the envelope of the other paper, the words "To my executors." Is that in his handwriting? A. Yes; that is his handwriting.

Q. Is the enclosure in his handwriting? Please examine it. A. No; that is not.

Q. Do you know whose handwriting it is? A. No; I do not recognize it.

FRANCIS L. SHIPLEY,
By the Examiner, by Consent.

603 JAMES W. TYLER, a witness called by and on behalf of the defendant-, having been first duly sworn, deposes and says as follows:

By Mr. N. WILSON:

Q. Please state your name, and residence? A. James W. Tyler; 925 E street northwest, Washington, D. C.

Q. And your occupation? A. I am, by occupation, a book-keeper, but at present I am selling real estate for Walter H. Acker, 704 Fourteenth street, northwest—real-estate salesman.

Q. How long have you resided where you reside now? A. About eleven years I have resided there. I think it was eleven years last October. I have lived in Washington since 1862, except when I have been away for a few months, or something like that.

Q. Did you know Mr. Philip A. Tracy, formerly a clerk in the General Post-Office? A. Yes, sir.

Q. When did you first make his acquaintance? A. I guess about thirty years ago—something like that. I knew him about thirty years when he died. It was about 1868 or 1869 when I first got acquainted with him.

Q. How well did you know him, and what were your relations with him, up to the time of his death? A. When I first got acquainted with him he was a book-keeper for John T. Mitchell, 931 Pennsylvania avenue, and I was a book-keeper and salesman at Joseph J. May & Company. They were then where Castleberg's jewelry store is now on the avenue, and then they afterwards moved up to where Crocker's shoe store is. That is where Mr. May was later. Mr. Gray withdrew in 1869, I think, from the firm.

604 —. What were your relations with Mr. Tracy up to the time of his death? —. Well, I was very well acquainted with him. I met him off and on for years. A couple of months before he died he met me on the street, and he said that he was in a bad way—that is, physically. I used to see him around in the Riggs house. I would be walking by there in the evenings, and I would go in and talk with him; and sometimes he would ask me to come in and talk during the day. He seemed to be in a good deal of distress.

Q. Will you state what knowledge you have of the paper that is marked Exhibit Shipley No. 4, and what you know of the history of its preparation, and in whose handwriting it is? A. Well, this paper was drawn up by me, and the cause of my drawing it up was that he used to tell me his troubles at all times, and he told me about his trouble with the Turner family. He said he thought that after his death there might be some trouble arise from the matter, and I suggested to him that he, at his leisure, should write out on paper his version of the matter, and that I would copy it on a piece of paper, and that he might sign it and leave it with his executors, in case after his death there should be any trouble. And he wrote at different times, on pieces of paper, what I have copied in there.

Q. When was this paper actually written by you? A. Isn't it dated up there? (Examining.) No; it has no date. It was in 1898. I am only quoting now from memory. It was cool weather—it might have been in January, February, or March. I cannot tell you. He was supposed to have dated it and signed it, but the date is left blank there on top.

605 Q. After you wrote it what did you do with it? A. I handed it to him, and he looked it over, and said that it was all right, and he was much obliged, or something like that.

Q. Did you leave it with him? A. Yes, sir.

Q. And when did you next see it again? A. It was shown to me after his death. I don't know whether you showed it to me around there, or not. I think you did, but I am not certain about that. I didn't see it again until after his death anyhow.

Q. Where was he when you gave it to him? A. He was at the Riggs house.

Q. Was anybody else present? A. No one that we were acquainted with. Generally when I saw him he would be sitting around the lobby of the Riggs house. I couldn't say—there might have been ten or fifteen people around there—but there was no one talking to him or to me.

Q. Did you give him the paper there? A. Yes, sir.

Q. The papers, or memoranda, from which you prepared that were given to you when and how? A. They were given to me one time when I was at the Riggs house. I returned them with this paper to him, both at the same time.

Q. When you gave it to him, was it put in an envelope? A. No, sir.

Q. You just handed it to him? A. I just handed it to him. He might have looked it over. I think you will find that he made one or two corrections—I think he scratched out a word, and 606 I think he changed the date there in one place, in relation to the year when something happened. He didn't do that in my presence, but he evidently did it afterwards. I see one word is scratched out.

Q. What, if any, interest did you have personally in the subject-matter of the paper, or in any of his business affairs, or property? A. Not the slightest in the world. He told me he was going to make me executor in place of Mr. Gray. He said that he had a great deal of confidence in Mr. Gray, but that he had plenty of money, and that I would get a commission for helping to settle up the estate. And he drew up a memorandum of will different from the will he left, and told me to take it to Mr. Darlington and have him draw up a new will. I took it home with me one evening, and next morning I was going to start down to Mr. Darlington's office to fix it up, but I got a postal card to do nothing until I saw him. I saw him during the day, and he said he would draw it up himself, and save the expense. I handed the memorandum to him, and that settled it. He used to have me do little things for him. I used to draw notes for him sometimes. He used to have me buy papers sometimes, when I was at the Riggs house, and he would have me go around and draw notes, and things of that nature—and run around and see different people for him. I did that as a friendly act. He was an old friend.

Q. It was a matter of friendship? A. Yes, sir.

Q. In what banks did he keep money, so far as you know? A. So far as my actual knowledge goes, he kept his money at the West End national bank on G street, between 14th and 15th. That
607 is the only one I ever went to for him. He told me about having boxes in different safe-deposit vaults, and whatever he told me about that I made a note of, and after he died I turned over those notes to Mr. Gray. He had two or three boxes in safe-deposit vaults, I remember, when Mr. Bryan ran for the Presidency the first time, and he thought everything was going to the mischief, and he put his money into gold and put it in safe-deposit vaults, so that he could have something left whatever happened. He was very much worried at the time.

Q. Do you know particularly in what safe deposit company he had a box? A. I turned that paper over to Mr. Gray after his death. After he died Mr. Shipley told me, and I told him to tell Mr. Gray. I said: "Tell Mr. Gray; he is one of the executors. Tell him to take charge. I have no right to take charge." And I understood afterwards that Mr. Shipley did.

Q. In the paper-writing marked "Shipley Ex. 2," at the bottom there are the words "Notify James W. Tyler, No. 425 E St., N. W." You are the person referred to? A. Yes; but my number is 925. I am the person referred to in that writing. The number should be 925.

Q. 925 is right. I thought it was 425, but I see it is 925. A. I don't think there is any 425 E street. That would be in the park up here, you know.

Q. Yes; it was a mistake on my part. A. I am the person referred to.

Cross-examination.

By Mr. JOHNSON:

608 Q. Mr. Tyler, I understood you to say that you thought there was some correction in this paper, of the date or something, in Mr. Tracy's handwriting. A. I think he told me he

changed the date of some year there, and you will see where he scratched out a word——

Q. See if you can find it. A. I guess it is there (indicating).

Q. This date, 1871? A. Yes, sir; that is the date. You will notice it if you hold it up to the light. He wrote his notes with a pencil, and it was faint I suppose, and I probably put it as some other year than 1871. You see it has been scratched.

Q. Have you any way of recalling what date you had put there before he made the change? A. No, I haven't. He wrote his in pencil, you understand, and he was a sick man. I put it down the way I thought he had it. In looking it over he changed it.

Q. I am asking you if you have any recollection? A. I have not.

Q. I understood you to say that the data from which you made up this statement was contained in separate written memoranda that Mr. Tracy gave you from time to time? A. He gave it to me all together. He made it up at different times. It was on sheets of paper like this (indicating)—on Riggs House paper.

Q. On hotel paper? A. Yes. Some of it was on paper of one hotel and some on another. I think part of it was on Arlington
609 paper. He dropped in at the Arlington and wrote some there.
He was in delicate health, and could not do it all at once.

Q. It was in a number of pieces? A. In a number of pieces; yes.

Q. Have you any way of approximating when it was that he handed it to you? A. Well, he handed it to me one day, and I finished it the next. It was either in January, February or March, I think. He handed it to me all together, but he wrote it at different times.

Q. You did not retain them except for a day or two? A. I handed them back with the paper, all together. I received them complete, and I handed them back with the paper. He read it over, and he said it was all right, and he afterwards told me he changed the date, or something. You see he scratched out a word.

Q. Have you any means of fixing in your mind how long it was before he handed you the memoranda that he first spoke to you on the subject? A. I don't think it was more than about two or three weeks. I couldn't tell exactly you know. I kept no record.

Q. Give it to us as near as you can. A. The only record I kept was when he would tell me he had any money around in safe-deposit vaults, and one thing another. I wrote that down, and after he died I turned the paper over to Mr. Gray. That was the only record I made.

Q. Your recollection would be that the first time he spoke to you on the subject of the Turner matter, however, was some time in the
year 1898? A. That is my recollection. I do not think it
610 was at the farthest more than three weeks' time before I prepared that paper.

Q. The phraseology and form of this paper are your own composition? A. No, sir; I copied it right from his notes. I tried to get it word for word. No, sir; it is his own.

Q. Is there any way in which you could fix the latest date when this paper could have been prepared? To make that plain: I think you stated in your direct examination that it was possibly in January, February or March? A. Yes, sir.

Q. Now, is there any way in which you are able to fix that it was not later than March? A. I can fix it very readily; because in March I undertook to learn to ride a bicycle. I was up at the school here on Fourteenth street learning to ride, and I met with an accident—tilted over to one side, and hurt myself. I had to call in a doctor, and I was in bed a week. That was the 31st of March. It was before that that this happened.

Q. Then we know it was not later than the last of March. A. And it was in 1898, because I put the date there, and supposed he would put in the day of the month when he signed it.

Q. Have you any way of fixing the earliest date it could have been? A. No. Only it was in 1898. I could not tell any closer than that. It wasn't later than the last of March because I got hurt then, with the wheel, and was in bed a week. 611

Q. There is no way in which you could fix whether it was in January or February, or whether it was late in January or early in January? A. I couldn't be positive about it. I expected him to put the date in when he signed it, and I undertook to copy just what he wrote on these different sheets of paper.

Q. But the preparation of such a paper, and committing it to his executors was suggested by you as a business expedient which you thought was wise? A. Yes, sir.

Q. And beyond that you had no interest in the matter? A. None whatever.

Q. You had no knowledge of your own of any of the facts stated in the paper? A. Except that he had talked to me occasionally about them. That caused me to make this suggestion.

Q. That is what you got from him. You had no personal knowledge? A. No, sir; I don't know the people. I wouldn't know them even if I saw them.

Q. I think you said that he once suggested your preparing a will, and either that you could take or he would take it to Mr. Darlington to have it put in form? A. I was to take it.

Q. Were you acquainted with Mr. Darlington at that time? A. Yes, sir; but I didn't say anything to him about it.

Q. Did you have any professional relations with Mr. Darlington at the time? A. No. 612

Q. Do you know of your own knowledge whether Mr. Tracy had? A. I don't think he had, but I don't know. I am not certain.

Q. You do not know that he had, and you do not know that he had not? A. No, sir. Mr. Darlington was one of the executors named in the old will, you understand.

Q. You stated that after you gave that paper to Mr. Tracy and returned him his memoranda, that he said it was all right. A. Yes, sir.

Q. Was that at the time you gave him the paper, or subsequently?

A. He read it over then, and said that it was all right, and then a few days later he referred to it again, and he said he had changed a date—which you can see there. I suppose he read it a second time, and noticed that I had made a mistake in the date.

Q. He confirmed it on two occasions? A. Yes, sir. You see he struck out one figure and put in some other year there, and he told me about that. That is the way I came to know it occurred.

Redirect examination.

By Mr. N. Wilson:

613 Q. When did Mr. Tracy first mentioned to you the subject of the Turner business or loans? A. Well, it was, I think—just talking from memory—not more than two or three weeks before this paper was prepared. I cannot tell. I kept no record. It was not a long time.

Q. What was the occasion he was talking about to you? A. Talking over different matters, and that seemed to worry him and he broached on that. I didn't ask him anything about it. He volunteered the information. Mr. Tracy was in poor health, and had been for a good while before. I used to drop in to see him, and sometimes he would be feeling better and would want to have me stay and talk, and sometimes he would be irritable, and excuse himself and go to his room, and I would have to go away.

Q. Did he mention any names except the names of Silas H. Turner? A. Yes; he mentioned young Turner. I don't know his name. I suppose he told me his name, but I have forgotten it. I describe him as young Turner. He was in Philadelphia. He used to write to him and get money from him.

Q. He mentioned his name? A. Yes, sir.

Q. Did he say anything in regard to the amount of money he had paid him?

Mr. Johnson: I object to that as incompetent, and as hearsay.

A. Yes. He didn't state any specific amount, but one time in talking about the matter he said this young Turner in Philadelphia—I don't know his name—had really got more than his share of what, if anything, he should be entitled to.

614 Q. What, if any, figures did he name? A. He did not name any figures at all about the total amount he got.

Q. What, if any, figures did he give in respect to any transactions with Mr. Silas H. Turner? A. I don't recollect anything about it. If there is anything in there——

Q. I mean aside from that. A. I don't recollect anything about it at all.

Recross-examination.

By Mr. JOHNSON:

Q. You had never heard of the subject until he mentioned it? A. No, sir; never dreamed of such a thing at all.

Q. Can you tell whether your first interview with Tracy in which he mentioned the Turner matter, was in January of 1898, or December of 1897? A. I don't know, positively, but I think it was in the year 1898. I am not positive.

Q. Your best recollection is that it was in 1898 when he first mentioned it? A. Yes, sir.

JAMES W. TYLER,
(*By the Examiner, by Consent.*)

The further taking of these depositions was thereupon adjourned until January 9, 1902, at three o'clock p. m.

615 WASHINGTON, D. C.,
THURSDAY, *Jan. 9th*, 1902—3 o'clock p. m.

Met pursuant to agreement of counsel at the office of Nathaniel Wilson, Esq., Pacific building, Washington, D. C.

Present on behalf of the complainants, W. G. Johnson, Esq.

Present on behalf of the defendants, Nathaniel Wilson, Esq., and Clarence Rich Wilson, Esq.

Present also witnesses Robert S. Rust, and Justin E. Sowers.

ROBERT S. RUST, a witness of lawful age, called by and on behalf of the defendants, having been first duly sworn, testified as follows:

By Mr. N. WILSON:

Q. Mr. Rust, will you please state your full name and address? A. Robert S. Rust, Front Royal, Virginia.

Q. Where did you live in August, 1888? A. I lived at Moreland, Fauquier county, Virginia.

Q. How far is that from Warrenton? A. Twenty miles.

Q. Who composed your family? A. My individual family?

Q. Yes. A. I had a wife and seven children.

Q. Did you, at that time, know Mr. Silas H. Turner? A. Yes sir.

616 Q. What relation was he to yourself or to your wife? A. He was the uncle of my wife, sir.

Q. Was he a member of your family in August, 1888? A. He was, sir.

Q. And did he die at your house? A. He did.

Q. How long had he been at your house before his death? A. I could not give you the exact date, sir; but it was from August until he died, I think in September.

Q. He came there some time in August? A. Yes, sir.

Q. Under what circumstances and for what purpose did he come to your house? A. He came there because he was in very bad health. He had no relative to care for him specially, and he asked to come there, sick with Bright's disease; and he remained there until his death.

Q. Where had he resided immediately before he came to your house? A. Immediately before he was at the Hotel Marshall—Lawman's hotel.

Q. What had been his occupation up to the time of his coming to your house? A. For a long time he was clerk at different times; but for a considerable time Silas Turner had had no regular occupation at all. He would frequently do a little work for parties in closing up estates, and things of that sort.

Q. What kind of work? A. He was clerk.

Q. Clerical work? A. Clerical work; yes, sir.

617 Q. Who attended him as his physician; do you know? A. He had several physicians. He had Dr. Frost, who was his regular physician, and Dr. Thomas L. Settle.

Q. Was he buried from your house? A. Yes, sir.

Q. You know Mr. Thomas M. Turner, a brother of Mr. Silas Turner; do you not? A. I do, sir.

Q. Did he come to your house while Mr. Silas Turner was ill? A. He did.

Q. About when? A. As I tell you, I cannot recollect dates, but it was some time in August, I think, when he came there.

Q. Did he come alone? A. Yes, sir.

Q. Did he remain there until the death of Mr. Silas Turner? A. Yes, sir.

Q. Was he there as your guest? A. Yes, sir; I think so. If he ever paid anything, it was to my wife. I know nothing of it.

Q. After the death of Mr. Silas Turner, who took possession of his effects? A. Thomas M. Turner.

Q. Of what did the effects consist, so far as you know? A. So far as I know, there was nothing but the clothing that he had and his will. There was also a gold watch, I recollect that perfectly. Outside of that I know of no effects.

Q. You know of nothing except his clothing and his watch?

618 A. That is all, sir.

Q. Do you know of his having, at that time, any other personal property, or any real estate of any kind? A. None, sir; none that I know of.

Q. State what you know of the discovery of his will. A. It was after the burial. I think it was the day after; I am not positive, but I think it was the day after he was buried. Thomas M. Turner went up in the room with myself, Mr. Justin E. Sowers, and W. H. Kerfoot. He went to the trunk, got the will, and read it in the presence of the three.

Q. Where is Mr. Kerfoot? A. He is dead, sir.

Q. And Mr. Sowers is here present? A. Yes.

Q. Were any other persons present? A. No others.

Q. Did you see the will yourself, except as it was held in his hands? A. I did not; I only saw it in his hands, sir.

Q. Do you know who the witnesses were? A. To the will?

Q. Yes. A. I do not.

Q. After the will was read, what disposition was made of it? What became of it? A. Tom Turner took possession of it, sir.

Q. Did you ever see it afterwards? A. I never did.

Q. Do you know what was done with it? A. I do not.

619 Q. Or what disposition he made of it? A. Not at all.

Q. When the will was produced, and after it was read, what was said by Mr. Thomas Turner about the will? A. Mr. Thomas Turner stated, after it was read, that it was all wrong; it was unjust, and that it should be righted; that there were others who were as much interested as his children.

Mr. JOHNSON: I object to that as irrelevant to any of the questions at issue in this cause, immaterial, and incompetent.

By Mr. N. WILSON:

Q. In whose presence was that statement made by Thomas Turner? A. In the presence of Mr. Sowers, Mr. Kerfoot and myself.

Q. What, if anything, did he say in respect of his own purpose about the will? What did he say he intended to do about it?

Mr. JOHNSON: That is objected to.

A. At that special time, Mr. Wilson, I can't say what he said.

Q. As to what he intended to do? A. As to what he intended to do; no sir.

Q. State what, if any, injunction or request for secrecy about the will or its contents was made of you?

Mr. JOHNSON: That is objected to.

A. Of me, individually?

Q. Yes. A. There was none made of me, individually.

Q. Did you hear any made of any one present? A. Oh,

620 yes; yes. He told my wife to keep quiet. I know that; I heard him tell her to keep quiet; that everything would be all right; that he would see that the matter was all right.

Q. That was after this will was read? A. Yes. It was not at that time, because she was not present then. It was afterwards that he made that statement.

Q. What was done or said by you concerning the will to other people? State whether or not its contents were made known by you, and if so to whom, and when? A. The contents of the will?

Q. Yes. A. Oh, of course I told my wife and my family and anybody else that I talked with in the neighborhood. It was generally known. Everybody knew of the contents of the will. There was no secrecy at all about it.

Q. At the time the will was read, who were in your house? A. Well, my wife was there, and her six children. Mr. Sowers was there, and I think his wife was there. I am not positive about that, but I think she was. I declare I don't recollect, sir. It would be right hard for me to recall who was present at the time. I wouldn't like to make a statement unless I was certain about it.

Q. Those are all you remember now? A. Yes. I know there were others there, but I can't recall their names.

Q. How long did Mr. Silas Turner remain in your house as your guest at that time? A. Mr. Silas Turner was in our house at that time from the time he came there in August up until his death in September. I can't give the date, sir.

621 Q. How long after the death of Mr. Silas Turner did Mr. Thomas Turner remain there? A. I can't tell you that.

Q. State approximately. A. Well, he was there some while, some little time; but I couldn't tell you how long. He would come and go, you know, but I couldn't tell exactly. I couldn't state how long.

Q. Do you know where he went when he left your house? A. I know that he went to Washington. He came here, and he went to Front Royal. I know of those two points that he went to, and to Warrenton. I know he took several trips to Warrenton.

Q. I wish to know where he went when he left your house permanently. A. I really have forgotten; but I think he went to Clarke county, to Mr. Justin E. Sowers' house in Clarke county.

Q. That is the gentleman who is here? A. Yes; I think he went to this house.

Q. Do you know the purpose of his visits to Washington? Do you know why he came to Washington from your house? A. Well, from my own individual knowledge I can't say.

Q. From what he told you, what he said to you, why did he come to Washington? A. Oh, well, he came to Washington in regard to this matter.

Q. Just state what you know about it. A. I never had much of any conversation with Mr. Turner upon that subject until 622 after he had gotten this money. It was then that I was asking him about coming to Washington, and he was telling me what he got.

Q. Before that, before he told you that he had the money, what if anything did he say to you it was necessary for him to do in order to get the money? A. He said it was necessary for him to get himself appointed as guardian, or something, before he could receive the money. That is the only thing that ever he said to me in regard to it.

Q. Whose name did he mention as that of the person from whom he was to receive the money? A. Mr. Tracy.

Q. Did you know Mr. Philip Tracy? A. I knew Mr. Tracy, sir, as a young man; never after the war commenced.

Q. Do you know, from your own knowledge, whether or not he lived in Washington at that time? Do you know where Mr. Tracy lived at that time? Did you have any knowledge of his residence at the time of Mr. Turner's death? A. No, sir; I had lost sight of Mr. Tracy for years.

Q. You had not seen him for years? A. No, sir.

Q. When did you next see Mr. Thomas Turner after he ceased to be a guest at your house, when he went away? A. I think sir, that when I saw him again it was in Front Royal, at my house. We moved; we left Fauquier county and moved to Front Royal.

Q. About when did you leave Fauquier county? I do not expect you to get it down to a dot, of course. A. It was in 1890 or
623 1891. It was the time of the boom at Front Royal. We moved there during that time.

Q. You moved there from Moreland? A. We moved there from Moreland. I saw Mr. Turner; he was at my house before that.

Q. I asked you when you next saw him. A. He was there just before that, you know; and when we moved there, and then he came there and stayed some with us. He had his family there.

Q. What I want to know is whether he came back, after going South, to your house in Moreland? A. I can't say, sir. I think he did, though; but I really can't say whether he came back to Moreland after going South or not. I think he did. I think he came back to Moreland before we moved to Front Royal.

Q. Did he come back alone? A. When he came he did. He didn't bring his family to our house.

Q. To Moreland? A. He came there before his family came.

Q. When did his family come to your house? A. I can't say, sir.

Q. And where did they come to your house? Where were you living when they came to your house? A. At Moreland.

Q. That was some time after the death of Mr. Silas Turner? A. Oh, yes; some time after the death of Silas Turner.

Q. Well, who came? A. Tom Turner, his wife. Erle Turner was not with them when they came, but his wife and three children.

624 Q. Who were the children? A. Wilmer, Ashby and Lunette were the three children—two girls and a boy.

Q. And how long did they remain with your family? A. Well, sir, I can't tell you.

Q. Some few days or few weeks? A. Some little time; yes—some weeks, but I couldn't tell you how long a time. I don't recollect.

Q. Did they afterwards visit you at Front Royal? A. Yes, sir; they boarded there. They boarded with us in Front Royal.

Q. For what period of time? A. You mean how long were they there?

Q. Yes. A. Well, now, you've got me. I don't know; some little time.

Q. A few weeks or a few months. A. Yes; all of a month, and maybe more; but I can't say how long.

Q. What year was it? A. I don't recollect that.

Q. Was it soon after the death of Silas Turner? A. Oh, it was some time after his death. It was after they all came from the South, you know.

Q. Who was at your Front Royal house? A. There was Mrs. Turner and her three children. The youngest one, that died at Front Royal, was not included. There were five children; but Wilmer had gone away. There were three children there at my house.

Q. Where was Wilmer then? A. I think she was at school, sir.

Q. Was she at your house at Moreland? A. Yes, sir.

625 Q. What knowledge, so far as you know, had Mrs. Thomas Turner and Miss Wilmer Turner and the two children of the contents and provisions of Mr. Silas Turner's will? A. I cannot, sir, speak of any special time that there was any mention made of it to any of the children; but I know that it was common talk. There was no secrecy about it in the house. Everybody just talked of it. They were in the house; but as to knowing of it at any special time, I can't say. But I know that everybody was talking about it; everybody knew it. They couldn't have helped it. It was common talk in the house.

Q. How frequently, and to what extent, were the provisions of the will talked of there at the Moreland house, in respect of the provision made for the children of Thomas Turner, as to who were the beneficiaries? A. Well, I can't tell sir.

Q. Give some general idea. A. Oh, well, we talked about it frequently. Anything of that sort in the house, where there was no secret made of it, would be almost continually talked of—for a while, at least.

Q. After Mr. Thomas Turner's family visited you at Front Royal, when and where did you see the family again? A. After they were at my house in Front Royal?

Q. Did they visit you again? A. I don't think I have ever seen any of them, sir, from that day to this. Thomas Turner may have been there—I declare, I can't recollect—but certainly none of his family after they left Front Royal. They boarded with a man named Coverstone, I think.

Q. What was Mr. Thomas Turner doing while his family visited you at Moreland and at Front Royal? A. I don't know sir.

626 Q. Do you know of his having any occupation at that time? A. None, sir, that I know of.

Q. Have you any knowledge of any notice having been given to Mr. Thomas Turner that there would be a contest of the will of Silas? A. Knowledge of any notice having been given him?

Q. Yes. A. No, sir.

Q. Or anything having been said to him on the subject? A. No, sir, not to my knowledge.

Q. Do you know of his having offered the will for probate himself, or of anything having been said by him to you concerning the probate of the will? A. Yes; he went to Warrenton from my house, you know, for that purpose.

Q. He went to Warrenton from your house? A. Yes, sir.

Q. Did he tell you he was going? A. Yes, sir.

Q. And did he tell you that it had been probated? A. I don't know that he did, sir; I don't recollect.

Q. When did you learn from him that he had received the money of Silas Turner? A. Well, I can't tell when it was.

Q. About? A. A short time afterwards. He and I were walking out together from my house.

Q. It was at your house? A. In Fauquier county; yes, sir. He told me that he had received, according to my recollection of it twenty-four thousand dollars, and that the estate amounted to thirty-thousand, and that he had given six thousand dollars 627 of it—there was six thousand dollars of it that went somewhere in the way of commission.

Q. Did he say to whom? A. I asked him the question at the time if he didn't think it was a pretty steep commission.

Q. What did he say? A. Well, my recollection of it is that he said then that he thought the commission was pretty steep, but he had consented to close the matter.

Q. Did he say what he had done with the money that he had received? A. No, sir.

Q. What if any money did he pay to Mrs. Rust, your wife? A. I don't know, sir.

Q. What if any property did he purchase for her; do you know? A. Well, he purchased a house and lot. He promised Silas Turner on his death-bed that he would buy a home for my wife. Silas Turner required it of him; and he bought this property in Front Royal, where we now live; but he hasn't deeded it, sir. He still holds it.

Q. The title is still in his name? A. Yes, sir.

Q. How do you know, Mr. Rust, that he promised Silas Turner what he would do for Mrs. Rust? A. I was present, sir, in the room.

Q. You were present? A. Oh, yes. I was in Silas Turner's room almost all the time during the sickness. I slept in his room with him all the time.

628 Q. Now, what did Silas Turner say to Thomas, and what did Thomas say, on that occasion? A. Oh, well, now, if you ask me to repeat their conversation exactly, I couldn't do it.

Q. Just give me the substance of it. A. He promised Silas Turner that he would do it—that he would buy a home for my wife.

Q. Was anything said about the amount that the home would cost? A. No, sir; if there was I don't know it.

Q. The title to the property in which you now live is still standing in his name, then? A. In Thomas Turner's name; yes, sir.

Q. And has stood so for years? A. Yes, sir; it has stood so since we moved to Front Royal.

Q. Who are the surviving sisters of Mr. Silas Turner? A. Miss Henrietta Turner, sir, is the only one.

Q. Where does she live? A. She is in Frederick, Maryland, now. She stays there in the winter, and she is at my house in Front Royal during the summer.

Q. Where was Miss Henrietta Turner at the time of the death of Mr. Silas Turner? A. I think she was there, sir.

Q. At your house? A. I think so. I can't recall exactly who was there, but I am sure she was.

Q. I think you said you did not know Mr. Erle Turner? A. I have never met him.

629 Cross-examination.

By Mr. Johnson:

Q. Mr. Rust, what is your age now? A. I am fifty-nine years old, sir.

Q. How long had it been prior to August, 1888, that you had seen Thomas Turner? A. Prior to August, 1888?

Q. Yes, sir. A. I think, sir, only one time in my life, and that was in Upperville, Fauquier county.

Q. Have you any idea how many years that was before 1888? A. I have not, sir. I was a boy.

Q. It was before the war? A. It was before the war.

Q. It is in evidence in this case that Mr. Silas Turner died the twenty-first of September, 1888. Is that about your recollection of the time of the month? A. I can't recollect the date, sir; I couldn't tell you to save my life.

Q. Can you say whether it was about that time of the month? Was it the latter part of September? A. Probably so. I know it was in September some time; but as to giving the date, I couldn't do it at all. I suppose it was somewhere about there; I don't know.

Q. Do you know how long he had been at your house before Mr. Thomas Turner came there? A. No, sir; I do not. Some little time, though. He had been there some time before Thomas came.

Q. As much as a month? A. Oh, I think so; I think so. I am not positive, though. I couldn't tell you; I don't recollect.

630 Q. How long do you think Thomas was there, altogether, before his brother's death? A. I don't know. If I couldn't tell you the one, I couldn't tell you the other.

Q. I mean, was it as much as two weeks or three weeks, do you think? A. Oh, I think so; yes, sir.

Q. Was he there as much as a month, do you think? A. He may have been; I don't know.

Q. I just want to get your best recollection about it. A. Yes. Well, I am just answering you that I can't tell you exactly. I really don't know. Of course I was paying very little attention then to how time was passing.

Q. Do you know which of the two men was the elder? A. I just don't know that, either. There wasn't very much difference in their ages, sir; and I don't know which was the oldest.

Q. You speak of Thomas getting his brother's will out of a trunk. Was that his brother's trunk? A. Yes, sir.

Q. Did he bring it there when he came to your house? A. Yes, sir.

Q. Silas brought the trunk when he came there? A. Yes, sir; when he came he brought his trunk.

Q. I infer that you never examined that trunk to know what was in it? A. Never, sir. I knew nothing in the world of the contents of his trunk.

Q. And you never examined any papers belonging to him? A. None in the world, sir.

631 Q. And he never exhibited any to you? A. None at all.

Q. Did Silas leave your house from the time he came there until his death? A. No, sir; he never left there to stay. He might have gone out somewhere.

Q. I do not refer to merely going out of the house; but did he leave your place and stay away all day or night? A. Oh, no; he never was away from there all night, sir.

Q. So that he made that his home from the time he came until his death? A. That was it, sir.

Q. You stated that you heard Thomas promise Silas on his (Silas's) death-bed to buy a home for your wife? A. He did, sir.

Q. You have used the expression "his death-bed." How long was that before Silas's death? A. Oh, well, it was a very short while, sir. I did not mean he died right away; but it was some days, probably before his death.

Q. A few days? A. Yes; not long.

Q. Not more than a week? A. No; a short while. I couldn't say exactly, but it was not long. It was after he was confined to his bed. I couldn't tell you how long it was.

Q. I think you have stated that you did not yourself look at the will? A. No, sir; I never saw it.

Q. These circumstances about which you have testified occurred from ten to thirteen years ago, did they not? A. Yes;
632 somewhere between that.

Q. When did you first have any communication with Mr. Wilson about this matter? A. I really did not bring Mr. Wilson's letters with me; but it was a very short time ago.

Q. I do not mean the exact date; but tell us about when it was? A. A few weeks ago; before Christmas some time, I reckon it was.

Q. Within the last two or three months? A. Yes.

Q. Had anybody else communicated with you about it before that? A. Not at all, sir. I knew nothing of it at all.

Q. When did you first know that there was a litigation involving Mr. Tracy's estate? A. When I received Mr. Wilson's first letters, I can't give the date.

Q. That was your first knowledge of it? A. Yes, sir.

Q. Had you any special occasion to consider these events and to discuss them in the last ten or twelve years? A. None whatever, sir. I looked upon the thing as all settled; and it didn't concern me one way or the other. It didn't bother me in any way, shape or form.

Q. Did you ever consider that you had any interest in the matter? A. None whatever.

Q. You were asked if Mrs. Rust or any one else had, in your hearing, spoken of contesting Silas Turner's will? A. If
633 Mrs. Rust has spoken of it?

Q. If she or any one else, in your hearing, had spoken of contesting Silas Turner's will. I think you stated that you had not heard any such thing mentioned? A. Not at all, by any one; no.

Q. Had you, at any time during that ten or twelve years, taken any steps or considered that you were called upon to take any steps with reference to this estate? A. None whatever, sir.

Q. In behalf of any one? A. None at all; I took no steps whatever.

Q. My question is whether you considered that you were under any obligation to take any for anybody. A. No; because if I had, I would have done so.

Q. When Mr. Thomas Turner got possession of Mr. Silas Turner's will, and his papers, and whatever other effects he had in his trunk, and left your house, you considered that you had no further concern with the matter? A Do you mean when Thomas M. Turner left?

Q. Yes. A. None whatever.

Q. You did not understand that you had any responsibility of any sort connected with it? A. None at all, sir.

Q. I do not suppose you made any memorandum of anything that took place? A. Not the slightest, sir; no memorandum whatever.

Q. And you took no special pains to have an accurate or exact memory of anything that took place? A. Oh, no; not an exact memory—certainly not.

634 Q. Have you any way, now, of fixing the time when you moved to Front Royal? A. The date?

Q. Yes, sir. A. No; I can't give you exactly the date that we moved to Front Royal. I know we moved there just at the very date that boom started—the Front Royal boom, the big sales there. We moved in the day before that, the evening before that.

Q. But there is not anything that you can now recall that will enable you to fix the date? A. No, sir, I can't fix the date.

Q. Can you state whether the purchase of a home there was made before or after you went there? A. It was made just before, sir.

Q. Just before? A. Yes, sir, just before we went there.

Q. About how long before? A. Well, I can't tell you that, exactly.

Q. Can you say whether it was a month or a year? A. Oh, yes, it was somewhere about a month, or maybe two months—something like that.

Q. A short period? A. Yes; I can't tell exactly. It was no very great while before we moved there.

Q. At Moreland were you living in a village or in the country? A. In the country, sir.

Q. Farming? A. On a farm—yes, farming.

Q. Are you engaged in that business now? A. No, sir; I am in Front Royal now, living there.

635 Q. What business are you engaged in there? A. Well, sir, the biggest part of my present business is an invention that I am trying to put on the market.

Q. You spoke of a child of Mrs. Turner's dying. That was the baby? That was the baby; yes, sir.

Q. I think you said you never read this will. A. No, sir.

Q. Did you know that it had been probated in the county court of Fauquier county, at Warrenton? A. Did I know it?

Q. Yes, sir. A. No, I didn't know it, because I wasn't there when it was done; but I know that Mr. Turner left there and told me so. I don't know it now.

Q. You were informed by him that that was the fact? A. Yes, sir—that he went to Warrenton for that purpose.

Q. Were you in Washington during these years at all? A. Yes; I was in Washington on several occasions, I reckon.

Q. I mean at or about that time? A. Yes, I was in Washington once about that time.

Q. Did you see Tracy? A. I did not, sir. I had no business whatever with Tracy.

Q. I think you said you did not see any papers belonging to Mr. Silas Turner's estate? A. Not one, sir, that I have any recollection of. There were no papers ever in my hands.

636 Q. Did you ever ask Mr. Turner to give you any information as to his brother's estate? A. Did I ask him to give it to me?

Q. Yes. A. No, sir.

Q. Whatever he said to you he volunteered? A. Undoubtedly; yes, sir.

Q. You made no claim of right to know anything? A. None whatever.

Q. I suppose you are not able to remember the details of the conversation that you had with Mr. Thomas Turner in which he informed you that Tracy had kept back six thousand dollars of the estate? A. He just simply told me——

Q. But I mean you are not able to remember the details of that conversation? A. Oh, no; no, sir.

Q. You could not pretend to give the words of it? A. Oh, no, certainly not.

Q. I suppose not. A. It has been too long ago to give exactly what he said.

Q. You have not undertaken to give, in your direct testimony, any more than just what you can now remember of it, is that right? A. Certainly—that he had done this thing.

Q. You do not claim now to remember all that Mr. Turner told you at that time, or everything that you said? A. Of, certainly not—not everything that either one said; but the conversation that we had amounted to just what I say.

Q. That is the substance of it, as nearly as you can recollect it now? A. Yes, sir.

637 Q. You stated that Mrs. Turner and her children first visited you at Moreland. That is right, is it? A. At Moreland; yes, sir.

Q. And you also mentioned the fact that Miss Wilmer went to school somewhere? A. Well, yes.

Q. Was that when they came to your house in Moreland, of when they came to your house in Front Royal? A. When Miss Wilmer went to school?

Q. Yes, sir. A. Well, I knew Miss Wilmer was going to school when she left my house in Front Royal, because I heard them say so; but she didn't go from my house to school, directly.

Q. She did not? A. No.

Q. Do you know from what place she did go? A. No; I don't know exactly where she went from.

Q. Do you recall what time of the year it was—whether it was summer or winter—that she first came to your house? A. Well, sir, I reckon it was in the fall; I think it was in the fall.

Q. Did she leave before her mother and the other children, or did they all leave together? A. When they all left my house, they all went together.

Q. She did not leave before her mother? A. No, I think not. I don't think she did. I think they all left at the same time. I wouldn't even be positive about that; but that is my impression.

638 Q. What I was trying to get at was your recollection as to whether Miss Wilmer went to school at or about the time of their first visit to you, or if it was only after their second visit at Front Royal that she went to school. A. Oh, no; Miss Wilmer was not at our house in Front Royal. I told you in my statement that she was not there.

Q. I misunderstood you, then. A. It was the other children.

Q. She was not at your house in Front Royal? A. No, sir.

Q. What is your best estimate of the date when she was at your house in Moreland? What is the nearest you can come to it? A. Well, the nearest I can come to it—I suppose she was there, anyhow, in October.

Q. Do you refer to October of the same year that her uncle died, or the following year? A. Oh, no, it was afterwards—the following year, I think.

Q. That would have been about October, 1889? A. Yes.

Q. That would be your recollection? A. That is my recollection of it now.

Q. At that time did you understand that she had been to school in Virginia anywhere? A. At the time she was at my house?

Q. Yes, sir. A. No, sir; I didn't understand anything of the sort.

639 Q. You understood then that they had just come up from the South? A. Yes; that was my understanding of it. The- hadn't been up a great while. I don't mean that they came directly to my house.

Q. No; I understand. Do you know where they went from there, when they left your house. A. I think they went to Clarke.

Q. That is Clarke county, Virginia? A. I think so. I don't know that, you understand; I say I think so.

Q. I understand. How far is that from Moreland? A. About twenty-odd miles.

Q. Do you know if they had relatives living there, in Clarke county? A. Yes, sir.

Q. Who were they? A. Mr. Sowers' family.

Q. Was it to his house that you understood they went? A. That was it, sir.

Redirect examination.

By Mr. Nathaniel Wilson:

Q. Mr. Johnson has asked you about your visits to Washington after the death of Mr. Silas Turner. Will you state when and with whom you came to Washington first after Silas Turner's death? A. I can't say exactly when, sir; but I came here with my wife and Mrs. Thomas M. Turner.

640 Q. Do you remember about when it was? A. Well, it was the fall of 1889, I reckon, sir.

Q. The next year? A. I think so. It was not a great while after they came here from the South.

Q. Where did you stop when you came here; do you remember? A. We stopped at the St. James, sir.

Q. Do you know what Mrs. Turner came for? A. I do not, sir. She came with us as company, she said. If there was anything else, I don't know it.

Q. What was your business here? What did you come for? A. Well, I had some little——

Q. Nothing connected with the Tracy matter? A. Nothing whatever, no sir; no indeed, sir.

Q. And you never saw Tracy here? A. I never did see Tracy after he was a young man; I never saw him after the war.

Q. Do you know whether or not, on that visit, Mrs. Turner saw Tracy? A. No, sir; I do not.

Q. How long were you here at that time? A. We came down one morning and went back the day after, in the evening—on the evening train.

Q. Were you ever here with Mrs. Turner at any other time? A. No, sir.

641 Q. Mr. Johnson inquired of you whether you felt under any obligation to see into the disposition of the estate or money obtained from Tracy; and I understood you to say that you did not? A. No, sir.

Q. What do you know of the character of the expenditures that were made by Turner after he told you that he had received money from Tracy, speaking generally? A. Well, I know very little, sir, of the character of his expenditures.

Q. I mean I want to know generally what he did in respect of them.

Mr. Johnson: If he knows anything about it.

Mr. N. Wilson: If he knows anything about it.

A. The only thing I do know is that I know he bought a colt of me. That is one thing I know.

Q. In respect of the care and sustenance of his family, what were his expenditures for family purposes? A. Indeed I don't know, sir.

Q. You have not any idea? A. No, sir; I know very little about people's expenditures.

Q. In what room in your house was the will of Silas Turner read by Thomas Turner? A. It was an upper room.

Q. The room in which he died. A. No, sir. He died in a lower room; but his trunk was in an upper room, the room in which he was sick at first. After he got so very sick I moved him 642 down into a room on the lower floor. He was sick for some time above, in an upper room.

Q. And his trunk had been left there? A. His trunk had been left there.

ROBERT S. RUST,
By the Examiner, by Consent of Counsel.

Justin E. Sowers, a witness of lawful age, called by and on behalf of the defendants, having been first duly sworn, testified as follows:

By Mr. Nathaniel Wilson:

Q. Please state your name and residence. A. Justin E. Sowers; Front Royal, Virginia.

Q. Where did you live in August and September, 1888? A. In Clarke county, Virginia, near Berryville. That was my post-office.

Q. Did you know Mr. Silas Turner during his life? A. The latter part of his life I knew him; yes, sir.

Q. What relation was he to you or to your wife? A. He was my wife's uncle; no relation whatever to me.

Q. Is your wife the daughter of his sister? A. No, sir; my wife is the daughter of his brothor.

Q. What is his name? A. William F. Turner is my wife's father name.

Q. Was Mr. Silas Turner a member of your family a short 643 time before he died? A. Yes, sir; a short time before he died he lived with me thirteen months.

Q. At the place you have named? A. In Clarke county; yes, sir.

Q. When did he leave your house? A. He left my house I think, sir, in June.

Q. Where did he go from there? A. He went over to Fauquier, and I don't know, but I think he went back to Salem, to the house of a man by the name of Cologne, and stayed there until he was taken sick, and went from there up to Mr. Rust's.

Q. After he left your house, did you see him again before he died? A. No, sir; only just a few days before he died, when he got so very sick, we heard of it and went over to see him.

Q. You and your wife? A. Me and my wife and my sister-in-law.

Q. What was her name? A. Eva C. Turner.

Q. Is she living? A. Yes, sir.

Q. Where does she live? A. She lives with me in Front Royal now.

Q. Did you see Mr. Silas Turner; and if so, where? A. I saw him at Moreland. He was able, when I went there, to walk about a little every day; but only a very few days afterwards he died.

Q. He was at Mr. Rust's house? A. At Mr. Rust's house; yes, sir.

Q. Was Mr. Thomas Turner there when you visited there? A. Yes, sir.

644 Q. When and where did you first see Mr. Thomas Turner? A. Well, the first time I ever saw him in my life was at Upperville. He was an assistant school-teacher for Mr. Armstrong, who taught school in Upperville at the time. He was then about nineteen years old, I understand. Then I never saw him or knew anything of him until Silas Turner was taken sick; and I don't think his own family knew where he was.

Q. With reference to the death of Mr. Silas Turner, when and where did you see Mr. Thomas Turner? A. I saw him at Moreland.

Q. You saw him there? A. Yes, sir.

Q. Will you describe his appearance? A. He is a tall man, with a florid complexion and wore a mustache.

Q. Will you describe his dress? A. He had on a summer suit, sir; and I thought it was right cool weather for a summer suit. He looked pretty rough.

Q. Then I understand you to say he was at Mr. Rust's house shortly before the death of Mr. Silas Turner? A. Yes, sir.

Q. How long did you remain on the occasion of that visit? A. I suppose I was there something like a week or ten days.

Q. Then did you go home, or did you stay until Mr. Silas
645 Turner died? A. I stayed until he died.

Q. You were there at the time of his death? A. At the time of his death; yes, sir.

Q. And at the time of his burial? Were you there at the time he was buried? A. I don't remember; I rather think I was not, sir, at the time of his burial. I am not positively sure about that, sir; but I was there at the time of his death.

Q. Who were in the house at that time? A. Well, sir, all the Moreland family, Mr. James Turner's family (Mr. James Turner himself was dead), Miss Lulu and Miss Nannie Turner, who are now living at Frederick City with their aunt; Miss Nettie Turner, who was a sister of Mr. Silas Turner; and Mrs. Henry Kerfoot.

Q. Have you mentioned all you remember? A. Mr. Singleton Rust was there, too.

Q. State if you heard the will or a paper purporting to be the will of Mr. Silas Turner read, and if so when and where, and by whom? A. I think it was a day or two days after the burial, sir. It was very shortly after the burial. I think it was either the very next day after or two days after; I don't know which. Mr. Thomas Turner invited Mr. Rust and myself and Kerfoot to go up with him in the room which was occupied by Mr. Silas Turner, and was considered his room. We went up there, and we four were present—Mr. Tom Turner, Mr. Rust, myself and Kerfoot. He opened a trunk that I recognized as the same trunk that Mr. Silas Turner had at my house, took out of it a paper that he said was the will of Silas Turner, and read it.

646 Q. Did you hear it read? A. I did, sir; and it left the property to his four children—Erle, Wilmer, Ashby and Lunette. There was a fifth child, little Eva, that Silas Turner did not know anything about.

Q. Was that child living then? A. It was born about that time, sir. I think possibly it was born about the time Mr. Tom Turner was at Moreland. At any rate, there was no mention made of this little one in the will, he said he left it to his four children.

Q. Was it read so that all three of you could hear it? A. Oh, yes, sir; in a distinct voice.

Q. What, if anything, was said at the time the will was read? A. Mr. Thomas Turner remarked that that was all wrong; that the*y* were others who had just as rightful a claim on Silas Turner's property as they had, and that he would see to it that it was properly adjusted.

Q. What, if anything, was said by the others of you? A. I don't think there were any remarks made by anybody at all except by Mr. Turner himself.

Q. After the will was read, what was done with it? A. Mr. Turner folded it up and put it back in that trunk.

Q. That is the last you ever saw of it? A. That is the last I ever saw of it; yes, sir.

Q. After the will was read, what communication of its contents was made to the people in the house, so far as you know?

647 A. It was not ten minutes after that time before I told my wife and my sister-in-law what the purport of the will was—that Uncle Silas had left his property to Tom's four oldest children; and then it was commonly talked of at Moreland, and at my house, too.

Q. I am speaking now of just at the time when you were at Moreland. How long did you stay there after the reading? A. Not more than two or three days, sir.

Q. Then you went home? A. Yes, sir.

Q. Who went home with you? A. I think I went by myself, sir.

Q. Leaving your wife and sister-in-law? A. Leaving my wife and sister-in-law there. I think I went over and came back immediately. I was farming at the time, and I had been detained over there longer than I expected.

Q. Then you returned? A. I returned, I think, immediately after his death.

Q. Do you remember when the death occurred? A. It was the latter part of September, sir.

Q. 1888? A. 1888.

Q. When you came back, did you find Mr. Thomas Turner there? A. I found him there; yes, sir.

648 Q. How long did you remain on that visit? A. Only a day or two. Then we all came back.

Q. Then all your family returned? A. Yes, sir.

Q. Did you leave Mr. Turner there? A. Yes, sir; when I left I left Mr. Turner there.

Q. Did you have any conversation with Mr. Thomas Turner about the will or the estate after the will was read? A. Yes, sir; after I went back Mr. Turner said he wanted to go to Washington, to see after Silas's business. He said, though, before he went that he would have to get the proper authority to claim the money; and he immediately opened up a correspondence with somebody at Minden, Louisiana; with whom I do not know. The impression he made upon my mind was——

Q. You need not state what your impression was; just state the facts. A. All right sir.

Q. Then you left him there when you went back home? A. Yes, sir.

Q. When did you see him again? A. I didn't see him any more, sir, until he and his family came to my house.

Q. When was that? A. That was in the following June.

Q. In June of the following year? A. In June of the following year.

Q. You do not know, of your own knowledge, where he was in the meantime? A. Yes, sir; he had gone back to Minden.

649 Q. Then he came up to your place in June of the next year? A. Yes, sir.

Q And brought his family? A. And brought his family, his sister and my sister-in-law. They were down there with him. Miss Henrietta Turner and Miss Eva Turner went down with him when he went to Louisiana.

Q. Henrietta was his sister? A. Yes, sir.

Q. And Eva was his niece? A. His niece.

Q. They came back the following June with his family? A. With his family, yes, sir.

Q. Did he come, too? A. Yes, sir.

Q. And they came to your house? A. They came to my house.

Q. As visitors, or boarders, or what? A. They paid me board while they were there, sir.

Q. And who of the family of Mr. Thomas Turner were there? A. Mr. Thomas Turner and his wife and Wilmer, Ashby, Lunette, and little Eva.

Q. Erle Turner was not there? A. Erle Turner was not there; no, sir.

Q. Do you know him? A. Erle?

Q. Yes. A. I never saw him but twice, sir; only once to speak to him. I saw him about ten minutes at Basic City on one occasion.

650 Q. Had you ever seen Mrs. Thomas Turner or the family before they came to your house? A. No, sir.

Q. How long were they at your house? A. They were there about three months, sir.

Q. Then when did they go? A. I think they went from my house to Mr. Rust's. It was just about that time that I moved to Luray; and just before moving they went over to Mr. Rust's.

Q. That is your recollection? A. Yes, sir; and from there they went up to Front Royal, and stayed with Mr. Rust while there.

Q. Then did they come to you again? Q. They came to me again at Luray.

Q. When did they come to you at Luray? A. They came to me in Luray, I think, in November, 1889, sir.

Q. How long did they remain with you there? A. The family only stayed with me a short time—just a few weeks. Then Mrs. Turner, Wilmer, Ashby and Lunette went to Alderson, West Virginia, for the purpose of going to school there; and I think they went to school there for a while. That is what Mr. Turner said he was going to do—send them to school there. He remained with me probably a month longer.

Q. Mr. Turner remained with you? A. Mr. Turner remained with me.

Q. What was he doing then? A. Nothing, sir; just having a good time.

Q. When did Wilmer go to school? When was she sent to
651 boarding school, do you know? A. I think she began the
session at Hollins Institute in 1890, sir.

Q. When did Mr. Turner leave your house? A. I think it was some time about Christmas; probably a little after. It was about Christmas.

Q. Of 1889? A. Of 1889; yes, sir.

Q. When and where did you see him next? A. The next time I saw Mr. Turner, I think, was in June, 1890, near Vernon, Wilbarger county, Texas.

Q. Did you go out there? A. Yes, sir.

Q. For what purpose? A. He agreed to give me a certain salary to go out there and take possession of a section of land that he had out there.

Q. You went there; and how long did you remain? A. I remained there a year. I contracted to stay a year, sir.

Q. And you then returned to Virginia. A. Well, I went from his place up on the Estacado Plains. There I remained nearly a year.

Q. And then you came back? A. I then came back to Front Royal. My family was in Front Royal all the time.

Q. What information did you obtain from Mr. Thomas Turner as to his having obtained from Tracy the money or any of the money of Silas Turner? A. Some little while after he made this remark that he would have to get proper authority to get this money, he came down to Washington; and a little while after his return to Washington he told me that he had gotten from Philip Tracy twenty-four thousand dollars, and that Silas's estate amounted to about thirty thousand dollars—that is my recollection—but that Mr. Tracy kept that for his commission.

652 Q. He kept the difference between what he received——
A. Between what he received and what the estate amounted to.

Q. Did you say anything further to him about it? A. I told him I thought that was a right stiff commission. His reply to that was that he thought it would be better to settle on Tracy's terms. If he did not it would protract the settlement of the estate, and it might in the end cost more, and he thought it would be for the best interests of his children to accept Tracy's terms.

Q. Did he say what disposition he had made of the money? A. He told me of a section of land that he had bought out there, and of a house that he bought at Vernon. Vernon is the county-seat of Wilbarger county. I saw the house when I was out there. It was a very nice property. I lived, as I tell you, a year on the section of land. It is a fine section. He told me he gave six dollars an acre for it, and he gave fifteen hundred dollars for the house and lot in Vernon.

Q. State what money he had, so far as you know, when he first came from Texas, to his brother's. A. Well, sir, I can't state anything of my own knowledge. I heard Mrs. Turner say——

Mr. Johnson: I object to that.

653 The Witness: I heard Thomas Turner say himself that he was actually so poor that he was ashamed to make his appearance before his Virginia relatives; and he certainly did look just as hard as he intimated. He looked that way, sure. I have frequently heard him speak of what a hard pull he had for a bare existence; and that statement was corroborated to me by Mr. Sam Mimme, who visited Captain Turner while I was at his ranch out there in Texas. I heard Mr. Mimme make the same statement.

Q. Where was Mr. Mimme from? A. I think his post-office is Minden, Louisiana; but he doesn't live in the town of Minden. He lives near there. He is a planter.

Q. State, if you please, what was the general scale of expenditure made by him in respect of his family after the conversation to which you have referred, in which he said that he had received the twenty-four thousand dollars. A. Mr. Wilson, when Mr. Turner and his family came up to my house they looked like they had seen a tough time. They were very poorly clad; and in a very short time after they got that money, the picture changed most wonderfully. They had all the good clothes they wanted, and plenty of them; and he gave them every pleasure in the world that our country could afford in the way of vehicles to travel around in. He spent the greater portion of his own individual time in fishing. He was very fond of fishing.

Q. Where did he fish? A. He fished in the Shenandoah river, for black bass. He was a very expert fisherman; and I often used to go with him.

654 Q. When the family of Mr. Thomas Turner came to your house, in June, and visited you there, what knowledge or information had they—that is, Mrs. Turner, Miss Wilmer Turner and the other children—of the estate of Silas Turner, and the disposition made of it by his will. A. Mr. Turner never told me that he had told them; but somebody evidently had, because I have often heard them mention it. As Mr. Rust stated, there was no secret about the matter. It was commonly talked about. There was scarcely a day when there was not something said about it. He

could not have sent them to Hollins Institute unless he had gotten some money from somewhere; and of course that is the money he was using.

Q. Will you state whether or not the provisions of the will, or the fact that the property went to the children of Thomas Turner, were frequently the subject of conversation at your house? A. They were, very frequently.

Q. I mean while the family was there. A. Mrs. Turner never talked to me much about it; but she would frequently talk to my wife, and my wife would repeat conversations that she and Mrs. Turner would have.

Q. Do you know, of your own knowledge, of Mr. Erle Turner's having made complaint to his father that he had not received his share of the estate? A. Mr. Tom Turner told me, while I was with him in Texas, that Erle had threatened him with a suit to recover a balance that he claimed was due him of $2200 from Silas Turner's estate.

Q. That was while you were in Texas? A. That was while I was in Texas.

655 Q. What did he say about the claim? A. "A nasty fool" was his remark. He says: "He is up here in Philadelphia, just leading a wild life, throwing money broadcast, every which way, and he will run through with the little bit that is due him, and then he will have nothing to live on." Mr. Turner got into a terrible rage about it.

Q. How did he indicate his rage? A. He went to Vernon and bought a Smith & Wesson pistol and loaded it, and kept it loaded in his trunk, and swore the very next time he laid his eyes on him he intended to kill him. I know I remonstrated with him, and talked to him about how bad it looked for a father to feel that way towards his boy.

Q. Where was Erle then? A. Erle was, I reckon, in Philadelphia, sir. I learned so from his father.

Cross-examination.

By Mr. Johnson:

Q. Mr. Sowers, did you look at the will? A. I never saw it, sir.

Q. You only heard it read? A. I only heard it read, sir.

Q. I understood you to say that Mr. Turner's family came to your house in June, 1889. Is that right? A. Yes, sir, I think it was June.

Q. And they stayed about three months? A. Yes, sir.

656 Q. That would have brought them over to the fall. A. Yes, sir.

Q. Then they went away? A. Yes, sir.

Q. And, as you understood, went to Mr. Rust's? A. To Mr. Rust's; yes, sir.

Q. And they visited you again at Luray? A. Yes, sir.

Q. In November, 1889. A. Yes, sir, I think so.

Q. And stayed a few weeks. Then do you know where they went? A. They went from there to Alderson, West Virginia.

Q. That is the time they went to Alderson? A. Yes, sir.

Q. Were you farming in the neighborhood of Luray? A. No, sir.

Q. What business were you in there? A. I was doing business over the Shenandoah Valley railroad, handling grain, at the time.

Q. For the railroad, or on your own account? A. No, sir; on my own hook.

Q. You say Thomas Turner left there about Christmas? A. Yes, sir; about Christmas—just shortly before or after.

Q. You have said that he occupied himself, while he was there, in having a good time. Will you tell us a little more specifically what you mean by that? A. Well, I meant to say he would spend money pretty heavily, and he seemed to be having a very nice time, hiring costly rigs and riding around. I couldn't see very well how he could afford to do it.

657 Q. Did he have the drinking habit at all? A. I never knew it until I went to Texas, sir; but he did then.

Q. I mean at Luray? A. Yes, sir; I believe he drank all the time, but I didn't know it in Virginia. Mr. Tom Turner in Virginia was a very different man from what he was in Texas.

Q. I am speaking about what you observed of him in Luray? A. Yes, sir. I didn't observe anything in Virginia but what was exactly right about Mr. Tom Turner; and I am very sorry to have to tell you that I observed a good many things that were not right in Texas.

Q. You formed a bad opinion of him there? A. I certainly did; and I had a right to.

Q. Now, you have said that you went there in June of 1890, under an agreement with him that he was to pay you some salary? A. Yes, sir.

Q. Did he pay it? A. He paid me three hundred dollars out of a thousand.

Q. You mean a thousand dollars was what he agreed to pay you? A. Yes, sir; he agreed to give me a thousand dollars, sir, to go there and run his ranch for one year.

Q. And then he did not pay it? A. He never paid it; no, sir.

Q. Did you sue him? A. No, sir.

658 Q. You have spoken of your wife. Will you please state what her given name is? A. Mary: Mary A. Turner was her maiden name.

Q. She is not a sister of Mrs. Rust. A. She is a cousin of Mrs. Rust.

Q. She is the daughter of another brother? A. My wife's father was William F. Turner. Mrs. Rust's father was James T. Turner.

Q. Have you a family of children. A. Yes, sir.

Q. Did you own your farm in Clarke county? A. Yes, sir.

Q. And did you dispose of it when you went to Luray? A. No, sir; I didn't dispose of it until after I had come back from Texas.

Q. How many children had you? A. I have three living, sir.

Q. I mean at that time? A. Three.

Q. Were they grown. A. No, sir; they were not at that time.

Q. About what age children were they then? A. My oldest boy is twenty-three years old.

Q. Now? A. Yes, sir. He would have been about ten then. Ten, six and two were about the children's ages.

659 Q. What were the younger children—girls or boys? A. The youngest one is a boy. I have one daughter and two sons. The oldest is a boy and the youngest a boy.

Q. Did you stay that whole year with Turner on the ranch? A. Yes, sir.

Q. Then you said, you went out on the Estacado? A. Yes, sir.

Q. What did you do there? A. I was engaged in business for Stark Brothers, of Louisiana, Mo., in the fruit-tree business.

Q. How long did you remain there? A. I remained there nearly a year, at Amarilla, Potter county.

Q. For whom was that? A. Stark Brothers, of Louisiana, Mo.

Q. Were you interested in their enterprise, or on a salary? A. On a salary, sir.

Q. Would you mind stating how much? A. How much salary?

Q. Yes, sir. A. They gave me fifteen per cent. cash on all approved orders, and ten per cent. after delivery.

Q. What did that amount to? A. Well, sir, it just depended upon the amount of sales, you know.

Q. Of course; but I say, what did it amount to? A. I did very well out there, sir. I made from $200 to $250 a month.

660 Q. How far was that from Turner's place? A. It was about two hundred and seventy-five miles northwest, up on the Fort Worth and Denver railroad.

Q. That is the same road that runs through Vernon, is it not? A. Only one road runs up through northwestern Texas. The beginning of the road is at Fort Worth, and it goes away out there through Colorado and New Mexico.

Q. Where do you live now? A. At Front Royal.

Q. How far is that from here? A. It is about eighty-three miles, sir—eighty-three or eighty-five.

Q. When was the first time you ever had any communication with Mr. Wilson about this matter? A. Only within the last month.

Q. Did that communication originate with you or with Mr. Wilson? A. Mr. Wilson. I didn't know anything about this matter except through Mr. Wilson.

Q. Had you discussed these matters in the last ten to twelve years prior to Mr. Wilson's communicating with you? A. No, indeed, sir; not at all. I don't think I have ever mentioned it, Mr. Johnson, in any connection whatever, except possibly I might have said something about the manner in which Mr. Thomas Turner had left Mrs. Rust's property. He has never given her any deed, as Mr. Rust stated, for that property; and I know it was Silas Turner's ex press wish. He made that statement in my presence—that 661 he meant to see that Mary Rust had a comfortable, good home.

Q. Who made that statement—Thomas or Silas? A. Silas did, and I heard Thomas say he was going to carry it out; but he has never given her any deed for the property that I know of. I may have said something about that, but only in connection with that.

Q. You never spoke of what you considered his breach of faith to you? A. No, sir. I was disgusted when I left Texas, when I left his place; and I struck out higher up. I didn't talk much to my people. They were all closely connected; and when I came back I kept the matter to myself. I didn't say much about how Tom Turner had treated me. I thought I could manage to wade along; but I felt sore over it.

Q. When did you first know that his children were suing for the money claimed to be due them? A. Only since Mr. Wilson spoke of it. That was the first knowledge I had of it, sir.

Redirect examination.

By Mr. NATHANIEL WILSON:

Q. I intended to ask if Mr. Kerfoot, the third gentleman who was with you when the will was read, is living? A. No, sir, he is not; he is dead. He moved down to Fairfax court-house. It was when the army was camped up there. He was taken with typhoid fever there, and died.

Q. State what information you had of any intended or threatened contest of the will of Silas Turner, and what if any information you conveyed at any time to Mr. Thomas Turner of any 662 such threatened contest. A. No, sir; I never had any talk of that kind with him at all. Everything that was said in reference to the will was said at that time.

Q. As you have already stated? A. Yes, sir.

JUSTIN E. SOWERS,
By the Examiner, by Consent of Counsel.

It is agreed by counsel that objection to the testimony of the foregoing witnesses, may be entered at the end of the depositions. For objection see after page 101.

(The further taking of these depositions was thereupon adjourned until Saturday, January 11th, 1902, at 2 o'clock p. m., at the same place.)

WASHINGTON, D. C.,
SATURDAY, *January* 11, 1902—2 o'clock p. m.

Met pursuant to adjournment.
Adjourned until 3 o'clock p. m. of the same day.

WASHINGTON, D. C.,
SATURDAY, *January* 11, 1902—3 o'clock p. m.

Met pursuant to adjournment.

Present on behalf of the complainants, Mr. Johnson.

663 Present on behalf of the defendants, Mr. Nathaniel Wilson and Mr. Clarence Rich Wilson.

Present, also, the two witnesses examined at the former session, Messrs. Robert S. Rust and Justin E. Sowers, and the complainant, Wilmer Turner.

Mrs. MARY M. RUST, a witness of lawful age, called by and on behalf of the defendants, having been first duly sworn, testified as follows:

By Mr. NATHANIEL WILSON:

Q. Please state your name and residence? A. Mary M. Rust; Front Royal, Warren Co., Virginia.

Q. How long have you resided at Front Royal? A. I think it will be twelve years next October.

Q. Where did you live before you went there? A. I lived in Fauquier county, about five miles from Marshall. Our home was called Moreland.

Q. Did you know Mr. Silas Turner, who died in 1888? A. Yes, sir.

Q. What relation, if any, was he to you? A. He is my father's brother—my own uncle.

Q. Did he reside with you at the time of his death? A. He did.

Q. How long had he been with you? A. He had been there about three months, I think.

A. Do you remember about the time of his death? It was in September, 1888, was it not? A. Yes, sir; it was September, 1888.

664 Q. Who constituted your family at that time? Who lived in the house there with you? A. Only Mr. Rust and my children and myself and Uncle Silas—that is, during his sickness.

Q. When and from whom did you first know of the contents of Mr. Silas Turner's will? A. I think it was just the day after his death, from my uncle, Mr. Thomas M. Turner.

Q. What information did he give you? A. He told me he was very sorry that we were cut off, but it was all left to his children.

Q. What, if anything, did he say in respect of your own interest in your uncle's estate, and what he would do with reference to it? A. Well, he told me to be quiet, and that it should all be just as my uncle had promised me.

Q. Did he say more definitely what he would do or what he understood your uncle to have promised you? A. What he would do?

Q. Yes. A. He told me he would do just what my uncle had promised—that he would carry out his wishes.

Q. And what were those? A. And they were that I should have a home in Front Royal, to be bought where I pleased to go, and that I should be made comfortable.

Q. That was shortly after your uncle's death? A. That was shortly after my uncle's death; yes, sir. It was the very fall of his death.

665 Q. How long did Mr. Thomas Turner remain then? A.
At our house? I think he stayed there maybe a month after his death. I don't remember the length of time; but it was that fall.

Q. Some time in the fall? A. Yes, sir.

Q. What was he doing during that time? A. He wasn't doing anything. He just stayed there with us as a visitor.

Q. Do you know, during that time, of his absenting himself and going away, or coming to Washington? A. Yes, sir; I think he came to Washington.

Q. Have you any knowledge of it? Did he tell you that he had gone to Washington? A. Yes, sir; he went from our house to Washington.

Q. Do you know where he subsequently went from your house? A. He went over in Clarke county, to Mr. Sowers' house.

Q. What is Mr. Sowers' first name? A. Mr. J. E. Sowers.

Q. The gentleman who is here present? A. Yes, sir.

Q. What, if anything, during that visit to your house, did Mr. Thomas Turner say in respect of Mr. Philip Tracy, or in respect of obtaining any money from Mr. Philip Tracy. A. Well, in the first place I think he spoke of Mr. Tracy as having Uncle Silas's money
in his hands, and that he would have to come to Washington
666 to get it, to see about it; and I think in the meantime he had
to write to Minden for some paper with the signatures of his children before he could get this money; and he stayed there until he did get that paper.

Q. That is what he stated to you, I understand? A. Yes, sir; that is what he stated to me—that he would have to stay there until he got this paper with the signatures of his children.

Q. What did he say as to his having written for such a paper? A. Well, I don't know anything except that he would have to have it before he could get the money. That's all that I remember of his saying.

Q. Have you any personal knowledge of what he did in the way of writing, except from what he told you? A. No, sir; I have not. I don't know.

Q. After he first mentioned that to you, how long was it before he said he had such a paper? A. I think it was several weeks; I don't remember exactly how long.

Q. You yourself did not see any paper. A. I did not see the paper, but he told me he got it; he had it.

Q. After his visit to you at the time you mention, when did you see him again? A. Well, he went over to Mr. Sowers,' and he stayed there until some time later in the fall, and he came back to our house and took the train at Marshall, I think, for home, or Washington. Whether he came around this way or not I don't know but he went from our house to his home not very long before Christmas.

667 Q. That was the Christmas after your uncle's death? A. Yes, sir.

Q. When did you see him next? A. Then he came back, I think, in June.

Q. Of the next year? A. Yes, sir; the next year.

Q. Alone? A. No, sir. My first cousin and my aunt, his sister, were with him. They went to Mr. Sowers', though; they did not come to our house first.

Q. Did he come to you afterwards and visit you? A. Yes, sir; he came to our house after that and visited me.

Q. And remained there how long? A. Well, I think he was there a week or two.

Q. Then where did he go? A. I think he went back to Mr. Sowers'.

Q. What did he do in respect of putting you in possession of any property or house and lot in Front Royal, and when? A. Well, it was the very fall, I think, that Uncle Silas died, that he went up to Front Royal with Mr. Rust to look at this property, and they bought it. No; it was the fall after.

Q. That is, it was the next year? A. Yes, sir. They went up there and bought this property. It was during the summer, I think, in August; and in October we moved up there.

668 Q. You moved to Front Royal? A. Yes, sir.

Q. And moved into this property? A. Into this house; but it wasn't very much of a house.

Q. And you have occupied it ever since? A. Ever since; yes, sir.

Q. Was there a deed made to you? A. No, sir; there was not. My uncle told me that he had it made to himself, but he intended to have it deeded to me after the last payment was made.

Q. Do you know, of your own knowledge, that the last payment was made? A. I made the last payment myself. He sent me the check, and I made the payment myself; and he requested me to send the papers back to him, and I sent them back to him.

Q. So the deed was to him? A. To him; yes, sir.

Q. And the property stands in his name? A. In his name.

Q. When was the last payment made, Mrs. Rust, as nearly as you can recollect? A. Now, I don't remember the year; but it seems to me it was 1899. I think it was.

Q. You do not remember very distinctly. Have you ever made any request to have the property conveyed to you? A. Yes, sir; I have written to him several times, but I never received any answer from him at all. He always told me that he would make it right with me, that it should be deeded to me; but it was never done.

669 Q. After your uncle's death, state when any other members of your uncle Thomas's family came to your house. A. How many of them?

Q. I ask you to state when, after your uncle Silas's death, the members of your uncle Thomas's family came to visit you. A. Uncle Silas died in 1888.

Q. September, 1888? A. Yes, sir. The next summer would be 1889, when he came to our house; and the summer following he brought his family to Virginia from Texas.

Q. About what time? A. I think it was some time in June.

Q. That would be June, 1890? A. Yes, sir.

Q. Who did he bring? A. He brought his wife and four children.

Q. What were their names? A. Wilmer Turner, Ashby Turner, Lunette Turner, and Eva Turner.

Q. Eva was the baby? A. The baby; yes, sir.

Q. She afterwards died? A. Yes, sir; she died in Front Royal.

Q. How long did they remain at your house? A. With us? I don't remember exactly. They were there several weeks.

Q. And from there where did tney go? A. Well, from there Wilmer went to Hollins. Her mother took her to Hollins. She came
back to our house, and they went to Front Royal from there
670 and stayed with me a while. He and his wife and the younger
children stayed there a while, and then they went from Front Royal to Luray.

Q. Did they come back to your house again? A. No, sir.

Q. Did they ever visit you again after that? A. Uncle Tom did, but none of the rest of them.

Q. State if, as a matter of fact, the provision made by your uncle Silas's will for your uncle Thomas's children became during that visit and was the subject of conversation between you and Mrs. Thomas Turner and Miss Wilmer Turner? A. Well, I don't remember any conversation specially that we had; but they all knew that the will was made, and left the money to the children. They all knew it, every one of them—Uncle Thomas's children and my children, too; and it was just the common talk in the family just how the will was made.

Q. What, if anything, was said in respect of the good will shown by your uncle Silas toward them. A. Well, they all remarked—I know Wilmer and Aunt Carrie, her mother, remarked what a good man Uncle Silas must have been to have left them all the money.

Q. While visiting you did Mrs. Thomas Turner make any visits to Washington? A. She came once to Washington with me.

Q. About when was that; do you remember? A. That was the summer she came to Virginia, to my house; and she came from there here.

Q. You have been in Washington some days, Mrs. Rust, have you not? A. Yes, sir.

Q. Will you please state how you happened to come down,
671 and who are you visiting? A. Now?

Q. Yes. A. I came down to Dr. Bishop's to visit my daughter.

Q. Who resides here? A. Yes, sir. Her home is here, at 1913 I street, northwest.

Q. And you have been visiting her? A. I have been there for two weeks today.

Cross-examination.

By Mr. JOHNSON:

Q. Mrs. Rust, were Miss Turner and her mother and the other children at your house at the time Miss Turner went to Hollins? A. Yes, sir.

Q. Do you remember now whether that was the home at Moreland or the one at Front Royal? A. The home at Moreland, in Fauquier county.

Q. It was from there that she went to Hollins? A. Yes, sir; she went from our house there to Hollins.

Q. Had you, prior to that, moved to Front Royal? A. No, sir; we went to Front Royal after that, that same fall.

Q. After she went to Hollins? A. Yes, sir.

Q. Do you recall what month it was that she went to
672 Hollins? A. I really don't remember; but I think it was in
September, and we went there in October.

Q. How long was it before she went to Hollins that this place in Front Royal was purchased, as you remember it? A. Why, the place was purchased, I think, in August.

Q. The August preceding? A. Yes, sir.

Q. Then it was bought in August, 1890? A. Yes, sir.

Q. And you were mistaken in saying that it was bought the same fall that your uncle died? A. No; I didn't say it was bought the same fall my uncle died.

Q. You say you did not say that? A. No, sir. No, sir; I did not.

Q. Did you not say, first, that it was the fall after he died, and afterwards say no, it was the next fall after? A. The fall Uncle Silas died Uncle Tom was at our house; and he went to Minden in the fall, and came back to our house the next summer, alone, without his family. Then the summer following he brought the family back. Then that fall, that same summer, they came to our house, and Uncle Tom and Mr. Rust went to Front Royal in August to look at this house, and purchased it. I think that was in August; and in September I think Wilmer went to Hollins from our house at Moreland, in Fauquier county.

Q. Did you go over to Front Royal at the time the house was purchased? A. No, sir; I did not. Mr. Rust did.

673 Q. You only know about the actual purchase what you
learned from them after they came back? A. Yes, sir.

Q. I understand, from your reference to that subject, that you think Mr. Turner has not dealt fairly with you in respect to that? A. Well, I don't think he did. I think he ought to have had the place deeded to me; and I think he ought to have made me comfortable after the purchase was made, as he had promised my uncle to do; but he didn't do it.

Q. As this matter has to go before a court, and you may not be correctly understood, will you be kind enough to say more specifically what you mean by "making you comfortable"? A. Well, in the first place, he bought the house and promised to have blinds put to it. It was not comfortable in that way. He promised to have a porch put to it, and we have never had blinds or a porch.

Q. Oh! You refer to the improvements on the property itself? A. The improvements on the property; and then Uncle Silas didn't specify that I should have money, but he said I was to be made comfortable. That was, I suppose, to fix the house in comfort and fix me comfortably in the house; but that was not done.

Q. Do you mean by that that you think that in addition to the house he should have given you some sum of money? A. No; I don't think——

674 Q. I am speaking about your understanding of it. A. I think he ought to have put me in the house and made the house and my surroundings comfortable; but they were not. I didn't expect the money; but he told me that I should be made comfortable, but that was all. He didn't do it.

Q. And you think he has not kept faith with you about it? A. No, sir; I don't think he did exactly as he ought to have done.

Q. Did he ever refuse to give you the house? A. No, indeed; never at all. He was very nice about it.

Q. Has he ever, to your knowledge, set up any claim to it himself? A. No, sir. He did tell me that he would pay the taxes on the place; but he has never done it but one single time.

Q. You mean the taxes for every year? A. Yes, sir. We have done that ourselves.

Q. I mean, you say that he ought to have paid them? A. He promised to do it.

Q. That is what I mean. He promised to do it for how long? A. All the time.

Q. I think you stated that it was in the summer of 1890 that Mr. Turner's family were at your house? A. Yes, sir; yes, sir.

Q. How long were they there? A. Well, they were there four or five weeks, I think. I don't remember exactly.

675 Q. Then were they there again? A. No, sir; that was the only time they were ever there.

Q. The only time they were ever at your house? A. Yes, sir; that was the only time his family were ever at our house except after we went to Front Royal.

Q. After you went to Front Royal, when they were there, who was there? A. Mrs. Turner; Uncle Tom—no; he was not there. She was there, and three children. Wilmer was at school at Hollins. She went on to Hollins; and when we moved to Front Royal they came to Front Royal to our house. They stayed there only a short time, though.

Q. Can you tell me when that was? A. Do you mean what month?

Q. No; the year and the part of the year, if you can recollect it. A. Well, I will just have to go back again.

Q. The best you can. A. It was in 1890.

Q. They left your house at Moreland in the summer and fall of 1890? A. That summer.

Q. Then they visited you at Front Royal in what part of 1890. A. It was in October when we went up there.

Q. How long did she and the three younger children stay there? A. I don't think she was there over a week.

Q. Oh! It was a short while? A. Yes, sir; just a short while.

Q. Then were they ever there again? A. No, sir.

676 Q. That was the last time? A. That was the last time.

Q. And have you ever met them after that? A. No, sir. I have never seen any of them since then except Uncle Tom.

Q. I mean Mrs. Turner and the children. A. No, sir; I never have seen any of them since.

Q. You had a considerable family of your own, had you not? A. Yes, sir; I had seven children.

Q. Were they about the age of Mrs. Turner's children, or were they older? A. Some of them were older, and some of them were about the same age.

Q. Mrs. Turner's youngest child at that time was about how old? A. It was a baby. It was a little thing in short clothes. I don't remember how old it was.

Q. A baby, though? A. Yes, sir.

Q. How old do you think Lunette was at that time? A. I reckon she was eight or nine years old; I don't remember.

Q. Do you think she was as old as that? A. She may have been. I really don't remember the child's age.

Q. She was a little child, anyway? A. Yes, sir; she was a little child.

677 Q. How old was Ashby? A. He was eleven, I think—ten or eleven. I think he was near the age of my son.

Q. What was your son's name? A. Robert Littleton.

Q. Is he living now? A. Yes, sir. He was twenty-one years old last August.

Q. And you think that Ashby was about his age? A. I think he was a little bit older than Rob., my boy.

Q. Then how old was Wilmer? A. I really don't know. I expect she was fifteen years old—fifteen or sixteen; somewhere along there.

Q. What was the youngest child's name? A. Eva.

Q. I do not suppose you ever heard Eva discuss her uncle Silas's will; did you? A. No, sir; because she couldn't talk.

Q. I thought probably you did not. Can you tell us something that you remember Lunette having said about the will and its contents? A. No.

Q. Tell me something you can remember that Ashby said about the will and its contents. A. I don't remember anything about it.

Q. Tell me some expression or language that Miss Wilmer ever used about the will or its contents. A. Well, she expressed herself about Uncle Silas's being such a good man.

678 Q. That was what she said? A. Yes, sir; and so did her mother.

Q. I am not speaking about her mother; I am speaking about the children. *Q.* I don't remember anything except Wilmer's using that expression, saying to me that Uncle Silas must have been a good man.

Q. Can you remember what year it was the last time you saw Thomas Turner? A. It was in 1891, I think, in the spring.

Q. 1891? A. Yes, sir. I think his family were at Basic City, and I saw him in Luray in 1891.

Q. That was the last time you saw him? A. Yes, sir.

Q. You must excuse me for bothering you about these things; but we have to know about them. Will you tell me, please, the time of your last letter from him? I presume you have not kept his letters; have you? A. No, sir. I have one letter from Uncle Thomas, when Uncle Tom wrote to me after he sent word about making this payment. I have that letter. It was to my aunt, his sister and myself, together; and I don't remember the date of the letter.

Q. What is the nearest you can come to it? A. I think it was in 1890 or 1891. I don't know; somewhere about 1890 or 1891. I don't know when it was. I don't remember; I haven't the slightest recollection; but it was after that. It must have been later; it must have been 1892.

Q. Well, it was after you last saw him? A. Yes, sir; oh,
679 yes, sir; it was after I saw him. After he went back to Texas he wrote and sent me the check; and I have that letter.

Q. But it was after you last saw him, at any rate? A. Yes, sir.

Q. And it was a good many years ago? A. Oh, yes, sir; a good many years ago.

Q. Eight or nine or ten years, as nearly as you can get at it? A. Yes, sir; I expect it was.

Q. You said, Mrs. Rust, in your direct examination, that you thought the last payment on this property fell due in 1899. Was not that a mistake? A. Yes, sir; that was a mistake.

Q. You did not mean 1899? A. No, sir; because it was after he went back to Texas that he sent me this check to make the last payment.

Q. You have never heard anything from him as late as 1899? A. No, sir. I don't remember dates; you will all have to excuse me about that, because I am trying to tell you just as near as I know how to save my life.

Q. That is what I supposed; and that is why I call your attention to it. It is of no importance, except that I wanted to call your attention to the fact. A. I don't want to misrepresent anything.

Q. Certainly not. How long do you think Mr. Thomas Turner was in your house before his brother died? A. I think he was there about a month.

Q. About a month? A. Yes, sir.

680 Q. It has been testified in this case that your uncle Silas died on the twenty-first of September. Does that agree with

your recollection of about the date? A. I don't remember about the date. I know he died in September; but I don't remember that date.

Q. Well, was it the latter part of the month? A. I really don't know. I thought it was somewhere about the middle; but I don't remember at all, Mr. Johnson, what time it was. It was some time in September; I think maybe it was the latter part. I think it was. I don't remember the day of the month.

Q. He was buried from your house, was he not? A. He was buried right on our place.

Q. Oh, buried there on the place? A. Yes, sir; buried right there.

Q. You spoke of being in Luray, I think you said, in 1891. A. Yes, sir.

Q. Were you on a visit, or were you living there? A. I was on a visit there at Mr. Sowers' house. He was living in Luray at the time; and I went there on a visit. My uncle came down to see me, and took me back up there with him.

Q. You refer to Mr. Justin E. Sowers? A. Yes, sir.

Q. Where was he living in Luray; do you remember? A. I don't know; I couldn't tell you.

Q. Did you not say you visited him there? A. Yes, sir; I know where he lived, but I say I couldn't tell you any streets, or anything like that.

681 Q. Oh, I understand? It was in the town of Luray. A. Yes, sir; he lived right in town.

Q. Do you remember how long you stayed there? A. I think I stayed there a week.

Q. Was Mr. Thomas Turner at his house during that time? A. Yes, sir; he was there during all that time.

Q. Then you went back to Front Royal? A. Yes, sir; then I went back to Front Royal, and I think he went up to Basic City after that, or somewhere up the line. I think he was up there, with his family.

Q. Do you refer to Mr. Sowers? A. Mr. Turner.

Q. How long did Mr. Sowers remain there in Luray? Do you know how long he lived there? A. No, sir; I do not.

Q. Do you know whether it was a year or a month? A. Oh, it was more than a month; it was several months, I think. I think he lived there over a year.

Q. Was it in summer time or winter that you made your visit? A. It was in the summer—in the early summer.

Q. In the early summer of 1891? A. Yes, sir. I reckon it was in May I was up there.

Q. Then he afterwards moved to Front Royal? A. Yes, sir.

Q. When did he move there; do you know? A. I don't remember what month it was.

Q. Did he live near you? A. It was in the spring. He came right to my house and boarded there with me.

682 Q. Is he living there still? A. No, sir; he is living in Front Royal.

Q. Do you remember when it was that he came there? A. No, sir; I have forgotten. It wasn't so very long after I left up there.

Q. After you left where? A. Up at Luray; after I made that visit to him. I think maybe it was the same spring.

Q. How long did he stay there? A. How long did he stay in Luray?

Q. With you. A. Oh, his family stayed in Front Royal, and he went back to Texas with my uncle, I think.

Q. From your house? A. No, sir. Yes, sir; he went from my house. I am not positive; I don't know; but he went to Texas with Uncle Tom, I know.

Q. That was after Mr. Turner's last visit to you? A. Yes, sir.

Q. When did you next see him? A. Who—Mr. Sowers?

Q. Yes. A. I think he stayed in Texas five or six or seven months; somewhere along there. He came back to our house some time during the winter or spring; I don't remember which.

Q. How long did he stay there? A. I don't know, sir.

683 Q. Well, can you say whether it was a month, or a week, or a few days? A. Oh, he stayed there a month or two, I reckon; and I think he went and made the second trip back to Texas.

Q. And how long did he stay the second time? A. I don't remember. They had moved away from our house and were living to themselves then; and I don't remember how long he stayed.

Q. How near was that to you? A. Just a street back of us.

Q. Well, did you not see him after he came back? A. Yes, sir; but I don't remember.

Q. I mean whether it was a year or two years, or not? A. Oh, no, sir; no, sir; it wasn't as much as a year. I don't remember how many months it was, but it wasn't as much as a year.

Q. Then he has been living there ever since. A. Ever since; yes, sir.

Q. Have you noticed what business he has been engaged in down there? A. Well, he was in the furniture business; he was running a furniture factory there for a while. Since then I don't think he has been in any business at all.

Q. Do you know where Hollins is, with reference to Moreland—I mean how far away? A. No, sir. I know you have to go through Front Royal to get to Hollins.

Q. What I want to know is if you know about the distance? A. No, sir; I can't tell you. I really don't know.

684 Q. Did you ever hear of a school down there in Virginia called Kleinberg? A. No, sir; I don't remember anything about it. I know Wilmer went to Hollins; but I think her mother took her away from Hollins and put her at some other school. I have heard that; I don't know anything about it.

Q. Did you ever hear of their going to a place called Alderson, West Virginia? A. Yes, sir. I have heard they went there, but I know nothing about it. I never heard anything about them; that was after they left us.

Q. It was not at any time they were visiting you? A. No, sir.

Q. Have you written to Mr. Thomas Turner since you last heard from him? A. Yes, sir; I have written several times.

Q. Now, will you tell us, as nearly as you can remember it, when it was (that is, what year it was) the last time you ever wrote to him? A. No, sir; I don't remember; but I can tell you I wrote to him not very long after he sent me the check to make that last payment.

Q. What I want to get at is, have you written to him within the last six years? A. No, sir.

Q. Do you think you have written to him within the last eight years? A. I reckon I have.

Q. You think you have? A. Yes, sir.

685 Q. But not within the last six? A. No, sir. I can't remember the dates or the times; but I know that pretty soon after I made this payment for him and sent him the papers, I wrote to him. I wrote to him twice.

Q. Have you any recollection that you did write to him after that? A. After I made the payment?

Q. I mean after that letter you have just described? A. Yes, sir.

Q. You know that you did write to him after that? A. Yes, sir; I know I wrote to him after that.

Q. But you cannot tell us just when, in what year, the last letter was? A. No, sir; I can't tell anything about that.

Q. And it was certainly not within the past six years? A. No, sir.

Q. Have you corresponded with Mrs. Turner during that time? A. No, sir; none of them.

Q. When did you first know that the children had a suit pending here with reference to this estate? A. I heard something about it several years ago; I heard that they had brought a suit, or were going to bring a suit; but I didn't know anything about it until last fall. It was just a few weeks ago, before Christmas. I came home then and heard about it; I didn't know anything about it before.

Q. Where did you get the information that you got a few weeks ago? A. I got it from Mr. Rust. He told me about it.

Q. Do you know how he heard of it? A. Yes, sir; he heard of it through Mr. Wilson.

686 Q. The counsel on the other side? A. Yes, sir.

Q. Through a letter from him? A. Yes, sir.

Q. And that was your first knowledge of it? A. Yes, sir. The first thing I knew about it was through Mr. Wilson; and when I came home, Mr. Rust told me about it.

Q. You have said that you heard in some way that there was a suit, or was going to be a suit, before that? A. Well, I heard it only through the paper. I heard somebody say that they had seen where there was a suit that would be brought—that the attorneys were going to bring a suit.

Q. You mean the newspapers? A. Yes, sir; in the newspapers; but that is all I ever heard of it. I never saw anything of it at all.

I didn't see it myself; but somebody asked me if I had heard or knew anything about it, and I told them I did not. It was dropped right there.

Q. Did you have any special interest in Mr. Silas Turner's estate, or its management, or anything of that sort? A. No, sir.

Q. Did you have any special reason to charge your mind with anything belonging to it? A. No, sir.

Q. Or keep any accurate memoranda or memory of any of it? A No, sir; nothing at all.

687 Q. And what you are able to recollect now of those events that happened back in 1888 to 1891 is the best that you can remember after from twelve to thirteen years? A. Yes, sir.

Q. Without having had occasion to talk about it or to remember it in the interim? A. No, sir.

Q. And that is probably the reason why you do not remember more about it? A. That is the reason I don't remember anything about it—because I haven't taxed my memory with anything. It is like a blank to me now. I don't think about it.

Mr. Johnson: That is what I had supposed.

Redirect examination.

By Mr. Nathaniel Wilson:

Q. In reply to a question of Mr. Johnson's, you spoke of what had been promised to you. A. Yes, sir.

Q. To whom did you refer as having made any promise? A. Uncle Silas had made Uncle Thomas promise to do these things for me. He said he knew he was not able to do it, or could not attend to it himself; but he had left it all in Uncle Thomas's hands, and he was to attend to it and do for me; that he had come to my house a sick man, and could not help himself, and I had nursed him through all of his sickness.

688 Q. Did you get that knowledge of your uncle Silas's intentions from your uncle Silas, or from Mr. Thomas Turner? A. I got it right from Uncle Silas, in the presence of Uncle Tom.

Q. That is what I want to know. What you have said in regard to your uncle Silas's intentions was said in the presence of Mr. Thomas Turner? A. Yes, sir; it was.

Q. During your uncle's last sickness? A. Yes, sir.

Q. Did your uncle Silas refer to his will in those conversations? A. He told me that he had a paper in his trunk—he didn't say a will, but he said he had a paper in his trunk, but that it didn't suit him, and he was very near calling me to burn it up, to get it out of his trunk—he wasn't able to get out of his bed—and to burn that paper. I told him, I says: "Oh, well, don't think about it now. You can attend to that later." But he didn't get well, and he didn't say anything more about it, and it rested right there. He said it didn't suit him, and he wanted it destroyed.

Q. How long was that before he died? A. That was maybe a week or ten days before his death. It was not very long.

MARY M. RUST,
By the Examiner, by Consent of Counsel.

(The further taking of these depositions was thereupon adjourned, subject to agreement.)

689 To each and every question propounded to, and to each and every answer by, the witnesses Robert S. Rust, Justin E. Sowers and Mary M. Rust, as to any statements made by Thomas M. Turner or Silas H. Turner, or by others not the complainants themselves, counsel for complainants objected, as being incompetent and irrelevant to any issue in this cause; as being hearsay; as being incompetent to prove any fact stated, or to prove notice to, or knowledge by, the complainants, or any of them.

Also objected to as incompetent for the purpose of contradicting any witness for complainants, because no previous foundation for such contradiction was laid in the examination or cross-examination of any of complainants' witnesses.

Counsel for complainants also objected to each question propounded to the witnesses, Justin E. Sowers and Mrs. Mary M. Rust, and to every answer thereto, concerning the alleged procuring of a paper alleged to have been signed by Thomas M. Turner's children, as being irrelevant; as being hearsay; as being incompetent and inadmissible to prove a guardianship of the complainants, or any of them, or to prove any authority to act for them or any of them in respect of Silas H. Turner's estate, and as being secondary evidence of the contents of an alleged paper, by the hearsay testimony of persons who never read such paper, nor had it read to them, nor ever saw it, the existence of the original of such paper not being proved in this cause, nor accounted for.

Counsel for complainants also objected to each and every question propounded to, and the answer by, each of said witnesses having a tendency to show any testamentary bequest by Silas H. 690 Turner, other than the will proved in this cause, or any modification or revocation, in whole or in part, of the will of Silas H. Turner proved in this cause; on the ground that neither a testamentary bequest, nor a modification or revocation of the whole or any part of said will by parol, if made or attempted by the testator, can have any validity or effect; and because the said will, by the judgment of the county court for Fauquier county, Virginia, and the laws in force in said State, is *res judicata*, and cannot be in anywise assailed in these proceedings.

And it was agreed between counsel for complainants and defendants that these objections be noted at the end of the depositions of the said named witnesses, instead of being noted after each question and answer.

FRONT ROYAL, VIRGINIA,
SATURDAY, *January* 18, 1902—1 o'clock p. m.

Met pursuant to agreement at the office of Wilbur A. Trout, notary public.

Present on behalf of the complainants, Mr. W. G. Johnson.

Present on behalf of the defendants, Mr. Clarence Rich Wilson.

Present also: Mr. Wilbur A. Trout, notary public; Mr. A. Johns, shorthand reporter; Mr. Justin E. Sowers, Mr. Robert S. Rust, Mrs. J. E. Sowers, Miss Ella C. Rust, and Miss Mazie Turner Rust.

691 It is stipulated by and between counsel that the depositions of Mrs. J. E. Sowers, Miss Mazie T. Rust and Miss Ella C. Rust may be taken before Wilbur A. Trout, Esq., notary public, at Front Royal, in the county of Warren, State of Virginia, orally, and may be stenographically taken by Mr. A. Johns, and transcribed by him into typewriting, and signed by E. L. White, examiner, on behalf of each of said witnesses.

Mrs. MARY A. SOWERS, a witness of lawful age, called by and on behalf of the defendants, having been first duly sworn, testified as follows:

By Mr. C. R. WILSON:

Q. Will you please state your full name, Mrs. Sowers? A. Mary A. Sowers.

Q. About how long have you lived in Front Royal? A. About eleven years.

Q. Where did you live before you came here? A. At Luray.

Q. How long had you lived at Luray? A. Eight months.

Q. Do you remember Mr. Silas H. Turner? A. Yes, sir

Q. Do you remember the circumstances of his death? A. I wasn't there when he died.

Q. Do you remember when he died, though? A. He died in 1888.

Q. Do you remember where he was when he died? A. At Mr. Singleton Rust's, in Fauquier county.

692 Q. What was the name of that farm? A. Moreland.

Q. You state, I believe, that you were not at Moreland at that time? A. When he died, no, sir.

Q. Did you go to Moreland shortly after his death? A. No, sir.

Q. Where was your husband at that time? A. When he died?

Q. Yes. A. He was at Moreland.

Q. Do you remember Mr. Thomas M. Turner? Do you know him? A. Yes, sir; I know him now.

Q. What relation is he to you? A. My uncle.

Q. Do you remember seeing him here or anywhere else about that time, shortly after Mr. Silas H. Turner's death? A. He was at our house the fall after Mr. Silas Turner's death.

Q. Where were you living then? A. In Clarke county.

Q. How did you happen to see him? A. He came to our house.

Q. Did he come there alone? A. I think one of his nieces was with him, but I don't remember positively.

Q. About how long did he stay with you at that time? A. I reckon he stayed about two months.

Q. Where did he go from there? A. He went to Louisiana.

693 Q. Did he go to Louisiana alone? A. No, sir.

Q. Who went with him? A. His sister, Henrietta Turner, and my sister, Eva Turner.

Q. When did you next see him? A. The next May.

Q. That would be what year? A. 1889.

Q. In May, 1889? A. Yes, sir.

Q. Were you still living at Berryville, in Clarke county? A. Yes, sir.

Q. Who came with him when he came to your house that time? A. My sister and aunt came with him.

Q. Did any other of the members of his family come with him? A. No, sir.

Q. How long did he stay at that time? A. I don't know. I don't remember how long he stayed.

Q. About how long, as nearly as you can recollect? Of course you cannot recollect accurately. A. Indeed I don't remember. I can't tell whether he left the latter part of the summer or fall; I don't remember that.

694 Q. It was some time that same year, though? A. Yes.

Q. Do you know where he went then? A. He went back to Louisiana.

Q. Again? A. Yes.

Q. Then when did you see him again? A. In 1890 the next.

Q. That would be the following year? A. Yes.

Q. How did you happen to see him then? A. He came on with his family at that time.

A. Who composed his family at that time? A. His wife and four children.

Q. What are their names? A. Wilmer, Ashby, Lunette and Eva.

Q. Eva was the baby at that time, a small child? A. Yes, sir.

Q. Did Erle Turner come with them? A. No, sir.

Q. Have you ever seen Erle Turner? A. No, sir.

Q. How long did that family stay with you at that time? A. Until some time in September.

Q. September, 1890? A. Yes, sir. Well, I think they went down to Fauquier at that time; I don't know how long they stayed.

Q. Did they come back to your house after going to Fauquier? A. I don't remember whether they went down there on a little visit and came back; they left my house in September, anyhow—Aunt Carrie did.

695 Q. "Aunt Carrie" was Mrs. Turner, I believe? A. Yes, sir.

Q. Mrs. Sowers, will you please state when you first heard, if you heard at all, of the will that Mr. Silas H. Turner left? A. They went down there and were there when he died, and when they came back I heard of the will.

Q. What did you hear about the will? A. That he had left his money or property to Uncle Tom Turner's four children—Erle, Wilmer, Ashby and Lunette—though he didn't name them in the will, but the four children.

Q. Did you, of your own knowledge, know anything of Mr. Silas Turner's property? A. No, sir.

Q. What, if anything, did Thomas Turner say to you about the will of Silas Turner, or the property of Silas Turner? A. I don't remember he said anything.

Q. Did he ever make any requests of you to keep the matter a secret? A. No, sir.

Q. What, if any, request for secrecy did he or his wife or any member of his family make? A. None.

Cross-examination.

By Mr. JOHNSON:

Q. Mrs. Sowers, did you say that Miss Eva Turner is your sister? A. Yes, sir. 696

Q. Is she still living? A. Yes, sir.

Q. Does she live here? A. Yes, sir.

Q. Is she here how? A. Yes, sir.

Q. I mean in this town? A. Yes, sir.

Redirect examination.

By Mr. C. R. WILSON:

Q. You may state, if you please, why it is that Miss Eva Turner is not here now? A. I don't know, sir; she couldn't come—one reason is that she can't wear her shoe.

Q. Is there any other reason? A. I don't know, sir.

Q. Did you ever hear her refuse to give any testimony in this case? A. She said she didn't know anything.

Q. She said she did not know anything about it? A. Yes, sir.

Q. Did you ever hear her tell me that she did not know anything about it? A. I don't know, sir.

Q. You did not hear her tell me this morning that she did not know anything about it? A. I don't know, sir, whether I did or not.

MARY A. SOWERS,
By the Examiner, by Consent.

697 Miss MAZIE TURNER RUST, a witness of lawful age, called by and on behalf of the defendants, having been first duly sworn, testified as follows:

By Mr. C. R. WILSON:

Q. Please state your full name. A. Mazie Turner Rust.

Q. You live at Front Royal, do you not? A. Yes, sir.

Q. You are the daughter of Mr. Singleton Rust? A. Yes.

Q. How long have you lived in Front Royal? A. Twelve years.

Q. Where did you live before you came here? A. Up in Fauquier at Moreland.

Q. You lived there with the rest of your family? A. Yes, sir.

Q. Do you remember your uncle, Silas H. Turner? A. Yes, sir.

Q. Do you remember the circumstances of his death? A. Yes, sir.

Q. How old were you at that time? Perhaps I should ask you how old you are now, if you have no objection? A. I am thirty-four.

Q. Do you remember Thomas M. Turner? A. Yes, sir.

Q. Do you remember his coming to Moreland? A. Yes, sir.

Q. When was it he came to Moreland? A. He came there in the summer of 1888.

Q. Why did he come there—do you know? A. He came there to see his brother, Mr. Silas Turner who had written to him.

698 Q. Mr. Silas Turner was sick at that time, was he? A. Yes, sir.

Q. You stated, I believe, that he had written for him, and he came? A. Yes, sir.

Q. How long did he stay with him altogether? A. I can't say; he left some time that fall.

Q. How long was he there that fall before Mr. Silas Turner died? A. I don't remember.

Q. Was it a few days or several weeks? A. Several weeks.

Q. What, if anything, do you remember in regard to the reading of the will of Silas Turner? A. I remember that it was read at our house, but I wasn't present.

Q. Were you told about the will of Silas Turner? A. Yes, sir.

Q. When? A. That same evening.

Q. Who told you? A. I don't know; some of the home people, I don't know just which one.

Q. What, if anything, did Mr. Thomas Turner say to you about that time in regard to the will? A. He said he knew that it wasn't right that the money should have been left that way.

Q. He said that on that same evening that the will was
699 read? A. Yes, sir.

Q. Said it to you? A. Yes, sir.

Q. What else did he say, if anything? Did he make any other statements about it? A. I don't remember any other.

Q. How long did he stay at your house after Mr. Silas Turner died? A. Several weeks, I think.

Q. Then where did he go from there? A. To Clarke county.

Q. To see whom? A. To see Mrs. Sowers.

Q. Did he go alone? A. No; I went with him.

Q. How long did you stay there? A. I was there four or five weeks, I think.

Q. Was he there all that time? A. He left just before I did, and went back to Washington.

Q. He went to Washington? A. Yes, sir.

Q. Do you know what he went to Washington for? A. He went on business, to see Mr. Tracy.

Q. Did he tell you that himself? A. Yes, sir.

Q. When did you first know that Mr. Silas Turner had left
700 any money at all? A. Just as soon as he died.

Q. Before he died did you know it? A. I knew he had money, yes.

Q. Did you know how much? A. No, I didn't.

Q. When did you find out first how much he had left? A. I don't know.

Q. You said, I believe, that you were in Clarke county several weeks? A. Yes, sir.

Q. You stated also that Mr. Silas Turner went up to Washington and came back to Clarke county? A. He didn't come back to Clarke, but I did.

Q. Where did you go? A. I went back home.

Q. When did you next see Thomas Turner? A. That same fall, he came down to Fauquier to our home.

Q. I will ask you what were your relations with Thomas Turner at that time? Were you on affectionate terms with him? A. I was; yes, sir.

Q. Did he show any particular fondness for you, rather than other of his nieces in this part of the country? A. Well, I think he did; there was one other I think he showed just as much for.

Q. Who was that? A. Miss Eva Turner.

Q. Then after Mr. Turner went to Louisiana, when did you see him again? A. The next summer.

701 Q. Did he come up from Louisiana alone? A. No.

Q. Who came with him? A. Mrs. Henrietta Turner and Miss Eva Turner.

Q. Did he stay at your house that time? A. He went to Clarke county first; he was at our house that summer, but I don't recollect what part of the summer.

Q. How long did he stay at your house? A. Several weeks.

Q. When he left your house, where did he go? A. I don't know; I think he went back to Clarke.

Q. When did you see him again? A. The next summer.

Q. The following summer? A. Yes, sir.

Q. That would be the summer of 1890? A. 1890.

Q. Under what circumstances did you see him that summer. A. They went over to Clarke and wrote for me to come over there, and I went there to meet him and his family.

Q. All his family? A. Yes, sir.

Q. Who composed his family at that time? A. Wilmer, Ashby, Lunette and Eva.

Q. Was Erle Turner with them? A. No.

Q. How long did you stay at Clarke county? A. I stayed there until they left, but I don't know how long it was.

702 Q. When they left where did they go? A. To our house, Moreland, in Fauquier county.

Q. How long did they stay there? A. They left there just before we came up here; I don't know how long before. He didn't come to Front Royal, but the family did.

Q. With whom did they stay here? A. With Miss Lile Adams.

Q. Did you see very much of them that summer—I mean of Thomas Turner and his children? A. Yes, sir.

Q. They lived with you most of the summer, did they? A. Yes, sir.

Q. You have stated that you first heard of Mr. Silas Turner's will on the night that it was read. Did you learn at that time what money Silas Turner had left? A. No, I didn't.

Q. What, if any, request for secrecy was made of you by Thomas Turner or by anybody else? A. None at all.

Q. Was the matter of Silas Turner's will and property kept a secret from anybody? A. No, sir.

Q. You may state whether or not, to your knowledge, the matter of the will and property of Silas Turner was known to Wilmer Turner and the other children of Thomas Turner? A. It was talked about in the family.

Q. In which family? A. Among both families. It was never kept any secret.

703 Q. Miss Rust, while Mr. Thomas Turner was staying with you, will you state what, if anything, he said in regard to any authority or paper relating to his children in Louisiana—an authority or paper to collect money, whether you heard him say anything about it, or whether you saw such a paper? A. He got the paper while he was at our house.

Q. What paper did he get? A. He was appointed guardian of his children. It was sent to him from Louisiana, and signed by his wife for the small children.

Q. Did you ever see that paper? A. I don't exactly remember.

Q. How do you know about it? A. I heard it talked about there in the house.

Q. Whom did you hear talk about it? A. I couldn't say just which one it was; I just knew he got it while he was there.

Q. You said you never saw that paper particularly. Did you ever see it or take particular note of it? A. No, I didn't.

Q. When was it that he received that paper? A. In 1888, in the fall.

Q. That was soon after Mr. Silas Turner died? A. Yes, sir.

Q. You may state, what, if anything, Thomas Turner said to you at any time with regard to his relations to his son Erle Turner, if you can recall anything he did say? A. He told me that he was disappointed in his son, very much disappointed in him; that he was not the man that he thought he was; and that if he were in my place he would stop writing to him. 704

Q. Were you writing to him at that time? A. Yes, sir; I was writing to him at that time.

Q. You kept up a correspondence with him, I suppose? A. Yes, sir.

Q. Did you ever see him? A. I never saw him.

Q. You simply corresponded with him as a cousin? A. That's all. Uncle Tom wrote to him and told him to write to me, in 1888.

Q. And then when was it that this other conversation took place? A. In 1891.

Q. Did he give any reason why he was disappointed with him? A. No, I don't remember of any.

Q. You simply remember that he said that he was disappointed? A. Yes, sir.

Q. Did Miss Henrietta Turner ever live with you in your family? A. Yes, sir.

Q. You may state what, if any, knowledge you have of money received by her from Mr. Philip A. Tracy? A. He sent her some money when she was at our house, since we have lived at Front Royal, and said that was part of the money that he got, that was allowed to him for his services as——

Q. He stated that in a letter? A. Yes, sir.

705 Q. You need not state anything that he stated in a letter, unless you have the letter. I do not know whether you have stated or not, but I will ask you again: Will you state whether or not the subject of Mr. Silas Turner's property and will was known to the children of Thomas Turner? A. Yes; they all knew of it.

Q. How do you know that they knew it? A. Because it was talked of in just general conversation.

Cross-examination.

By Mr. JOHNSON:

Q. Miss Rust, can you remember when it was you saw your uncle Silas last before the time that he was ill at your home? A. No, I can't.

Q. Do you remember where he lived before that? A. He lived in Fauquier.

Q. How near to you? A. I don't know.

Q. Do you know whether it was fifteen miles or five? A. He just boarded at different places.

Q. Have you no idea how near it was to where you lived? A. No.

Q. Can you remember whether you had seen him within a year before that or not? A. No, I don't remember.

706 Q. You had seen him before, had you not? A. Oh, yes; I had known him before.

Q. Was that the only time he had lived at your house? A. No, he had lived there before that, at different times.

Q. How long had he stayed? A. I don't know; a few months at a time. The last time he was there to stay any time he was there three months.

Q. You cannot give any idea as to how long it was before the last visit that you saw him? A. No; I have no idea.

Q. He was never married, was he? A. No.

Q. Do you know what his age was at the time of his death? A. No.

Q. You just have been about eighteen at the time of his death, were you not? A. I think I was.

Q. Had he ever talked of his business with you? A. No.

Q. Had you ever asked him any questions about it? A. No.

Q. Did he ever discuss his business in your presence? A. He never did.

Q. Did you ever discuss his business with any one else? A. No; I don't know that I ever did.

707 Q. Mr. Wilson asked you if, at the time your uncle Thomas was here you were on good terms with him, and I understood you to say that you were. A. Yes.

Q. Did those pleasant relations cease? A. I have never seen him since he lived here in 1891; I have never corresponded with him.

Q. I am speaking about your own attitude. Have your own feelings changed towards him since then? A. I din't think just the same of him now that I did then.

Q. Is there any cause for that? A. Not personally any cause.

Q. You mentioned a Miss Adams, that I think you said his family lived with at one time, did you not? A. Yes, sir; he boarded there for a few weeks.

Q. Was that here in Front Royal? A. Yes, sir.

Q. Do you know whether or not she was a relative? A. Yes, sir; she was a relative.

Q. Was it a Miss Adams or a Mrs. Adams? A. Miss Adams.

Q. In what way was she related? A. They were cousins; I don't know how near.

Q. Cousins of his, or of yours? A. Cousins of mine, as well as of his too.

Q. Was she a child of a sister? A. No, sir.

708 Q. Mr. Wilson asked you about some paper which I understood he thought was sent from Louisiana; you never saw that paper, did you? A. No; I don't remember ever seeing it.

Q. You never had it in your hand? A. No.

Q. Or read it? A. No.

Q. Did you ever know Mr. Tracy? A. No.

Q. You said that Mr. Tracy sent money to your aunt, Miss Henrietta Turner; was it on more than one occasion? A. Yes; I think he sent her some several times.

Q. Was that while he was living with you? A. Yes, sir.

Q. Can you fix in any — when it was? A. No, I cannot.

Q. Can you fix the year? A. No.

Q. Have you any way of fixing it at all? (A pause:) Do you know whether it was before or after 1891? A. It was after 1891.

Q. It was after Mr. Thomas Turner lived here? A. Yes, sir.

Q. Do you know whether it was one or more years after? A. No, I don't.

Q. Will you be kind enough to state how you knew that he sent her money? A. She told me.

709 Q. You did not know it otherwise? A. I had a check cashed for her.

Q. A check of his? A. Yes.

Q. Do you remember the amount? A. Fifty dollars.

Q. Do you remember on what bank it was drawn? A. No.

Q. Do you remember by whom it was signed? A. It was Mr. Tracy's check; that is all I remember about it.

Q. And it was signed by him, then? A. Yes, sir; he sent it to her.

Q. You understood her to say that she received this money in the mail from him? A. Yes, sir.

Q. But she did not give you the letters? A. No, not the letters.

Q. Did you ever have them? A. No.

Q. Who first communicated with you about this matter—I mean this case in which you are asked to testify? A. I first saw it in the paper.

Q. I say who first communicated with you about it? A. What do you mean?

Q. Well, who first asked you to testify in the case? A. Mr. Wilson.

Q. When was that? A. That was in the fall.

Q. I beg your pardon? A. This fall.

710 Q. By letter? A. Yes, sir; by letter.

Q. Was that the first time you were spoken to, or written to, about it? A. I have never been written to about it; he wrote to my father about it.

Q. He never wrote you to- about it? A. No, sir.

Q. That is what I wanted to know. When were you first communicated with, by writing or otherwise, with respect to this matter? A. My father told me about it. He got the letter.

Q. That was this last fall past? A. It hasn't been so very long ago; I don't remember just when it was.

Q. Before that nobody had either written to you or spoken to you about the matter; is that right? A. Yes, sir.

Q. Has anybody talked to you about it from the time that your father got that letter up to now? A. Nobody except my father; my father has talked to me about it.

Q. Anybody else? A. Nobody else, except at home; no.

Q. Did you hear of Mr. Tracy's death at or about the time he
died? A. I don't remember when I heard of Mr. Tracy's
711 death; I don't remember anything about it. I don't remember
when I heard it.

Q. Do you remember any one telling you how long ago it was, or how long ago it was you learned of your aunt's receiving any money from him? A. No.

Q. She did according to your understanding, receive money from him more than once? A. Yes, sir.

Q. Was it frequently? A. No; I don't think it was.

Redirect examination.

By Mr. C. R. WILSON:

Q. Miss Rust, in regard to your knowledge of this case, when you were asked to testify: When were you first seen by an attorney in this case in regard to testifying? A. I don't remember the month.

Q. About when? A. Some time this fall.

Q. By whom? A. By you.

Mr. C. R. WILSON: I did not think you were quite clear as to what Mr. Johnson was asking you about.

MAZIE TURNER RUST,
By the Examiner, by Consent.

Miss ELLA COPELAND RUST, a witness of lawful age, called by and on behalf of the defendants, having been first duly sworn, testified as follows:

By Mr. C. R. WILSON:

712 Q. Will you please state your full name? A. Ella Copeland Rust.

Q. Do you remember when Mr. Silas Turner died? A. Yes, sir.

Q. And the circumstances of his death? A. Yes, sir.

Q. Where were you then? A. I was at home in Moreland.

Q. You were about thirteen years old then? A. Yes, about that, I reckon.

Q. Who else were living at home with you then? Who composed your family? A. All my sisters, and mama and papa.

Q. They were all there, were they? A. Yes, I think they were.

Q. Do you remember Mr. Thomas Turner when he came to Moreland? A. Yes, sir.

Q. How long was he there before Silas Turner died? A. I don't remember exactly, but I suppose it was several weeks.

Q. Did you hear that Mr. Silas Turner had left a will or did you know at that time that he had left a will? A. I knew it after he died.

Q. How did you come to know it? A. It was talked about at home, that he left a will.

Q. Do you remember who first told you about it? A. No, sir; I just remember that it was talked about; I don't remember
713 who told me, but I remember that evening, when it was read.

Q. You knew it that very evening? A. Yes, sir.

Q. When did you first know that he left any money? A. That evening.

Q. Did you know how much money he left? A. No, sir; I didn't know how much he left.

Q. How long did Mr. Thomas Turner stay at your house at that time? A. I don't remember how long he stayed just at that time.

Q. Do you remember about how long he stayed? A. Well, he was there off and on until the fall.

Q. Until the fall of that year? A. Yes, sir.

Q. You say he was there off and on; do you mean he went away and came back? A. Yes, sir; I think he did. But I was small then, and I don't just remember. As far as I remember, though, he was there off and on.

Q. Do you recollect anything in regard to a paper that he received from Louisiana, a paper relating to his children. A. Yes, sir.

Q. What do you remember about that? A. I remember the paper was there; that he got it when he was at home, with his children's named signed to it by his wife.

714 Q. How do you know that? A. It was talked about there at home among us. I was a child, though, but it was talked about there.

Q. Do you know what he wanted that paper for? A. I thought it was as guardian to his children.

Q. You knew, of course, that he had children? A. Yes, sir.

Q. Had you ever seen them before that? A. No, sir.

Q. When did you first see his children? A. In 1889 or 1890; in the spring or summer.

Q. How did you happen to see them? A. They came to our house.

Q. In Moreland? A. Yes, sir; in Moreland.

Q. Will you please state how long they stayed at your house when they came there in 1890? A. I don't remember; I can't say how long. I know we came up here that fall, and they left before we came.

Q. They came to Front Royal with you? A. They came a little before we did; and then after we came to Front Royal they came to our house.

Q. Do you remember of ever seeing that paper that has been spoken of? A. I don't remember whether I ever saw it or not; I remember him getting it, though.

Q. You may state whether or not the will of Silas Turner and the property left by him, or the fact that he had left property to the children of Thomas M. Turner, was generally known to you and the other members of your family? A. Yes, sir; all of them

715 knew it.

Q. How do you know they knew it? A. It was talked of among them, among us all.

Q. What, if anything, did the children of Thomas M. Turner know about it? A. The children and all of us talked about it; it was talked of among us. They knew that the money was left.

Q. What, if any knowledge, did Wilmer have about the money? A. I don't know; I don't remember exactly. But I know it was talked of there at home.

Q. Did you ever make any attempt to keep it secret from the children? A. No, sir.

Q. Did anybody ask you to do that? A. No, sir.

Q. Did you ever see the children of Thomas M. Turner anywhere else except in Moreland and here? A. No, sir.

Q. Did you ever see Erle Turner? A. No, sir.

Q. Was Mrs. Thomas Turner with her husband and children when they stayed with you at Moreland? A. Yes, sir. I don't exactly remember whether they were here or not.

Cross-examination.

By Mr. Johnson:

Q. Miss Rust, will you be kind enough to tell me what 716 month your birthday comes in? A. April.

Q. And the day of the month, please? A. The 28th of April. I was twenty-five my last birthday.

Q. This home that you call Moreland, is not that near a place called Marshall, on this railroad? A. Yes, sir.

Q. Can you tell me about how far it is from here? A. It is about six miles from Marshall.

Q. Moreland is? A. Yes, sir.

Q. This way or the other way? Nearer here, or fa-ther from here? A. I don't know exactly how far it is.

Q. Can you remember when, before his last illness, your uncle Silas was at your house? A. No, sir. I just remember seeing Uncle Silas and knowing him, but I don't remember anything about him.

Q. How long would you say he was at your house that last time, altogether, from the day he came until his death? A. Indeed I don't know.

Q. Would you think it was one month, or three months, or half a year? A. I do not remember how long it was.

Q. You could not form any idea? A. I don't remember.

Q. You did not try to remember it, did you? A. I don't 717 remember. I was small then, and I can't remember.

Q. And you did not try to remember? A. No, sir; I didn't try to remember.

Q. You never thought at that time that twelve or thirteen years later lawyers would come around and ask you questions about it, did you? A. No, sir.

Q. You did not make any serious effort to remember any of these things, did you? A. No, sir.

Q. I guess you have had other matters on your mind in the last thirteen or fourteen years that have interested you a great deal more than any of this matter? A. Yes, sir; but this has not interested me very much.

Q. The affairs and interests of your own life have been more a subject of your memory than any of these matters, I suppose? A. Yes, sir.

Q. Do you think you could remember accurately the details of your own life during all that time? A. I don't know.

Q. You have forgotten a great many of these things, have you not? A. I have never thought about it.

Q. I suppose not. You did not understand that you had any duty in connection with any of these matters did you, at that time or since? A. I never thought about it, one way or the other.

ELLA COPELAND RUST,
By the Examiner, by Consent of Counsel.

Adjourned to meet by agreement.

718 Counsel for complainants objected to each and every question propounded to the witnesses Mazie Turner Rust and Ella Copeland Rust and to each and every answer to such questions tending to show any statements or declarations by Thomas M. Turner on the ground that the same were incompetent and irrelevant; were hearsay; and were not admissible for the purpose of contradicting any witness for complainants, on the ground that no foundation therefore had been laid in the examination of any of the witnesses for the complainant-.

Counsel for complainants also objected to each and every question propounded to the witnesses Mazie Turner Rust and Ella Copeland Rust and to each and every answer thereto concerning the alleged procuring of a paper alleged to have been signed by Thomas M. Turner's children or signed for them, as being hearsay; as being incompetent and inadmissible to prove a guardianship of the complainants or any of them, or to prove any authority to act for them, or any of them, in respect to Silas H. Turner's estate; and as being secondary evidence of the contents of an alleged paper, the original of which is not proved in the cause or accounted for, by hearsay testimony of persons who never read the paper nor had it read to them nor ever saw it.

And it was agreed between counsel for complainants and defendants that these objections be noted at the end of the depositions of the same named witnesses, instead of being noted after each question and answer.

719 WASHINGTON, D. C.,
THURSDAY, *March 20th*, 1902—3.30 o'clock p. m.

Met pursuant to agreement of counsel at the office of Nathaniel Wilson, Esq., Pacific building, Washington, D. C.

Present on behalf of the complainants, W. G. Johnson, Esq.

Present on behalf of the defendants, Nathaniel Wilson, Esq., and Clarence Rich Wilson, Esq.

GEORGE T. HASLAM, a witness of lawful age, called by and on behalf of the defendants, having been first duly sworn, testified as follows:

By Mr. N. WILSON:

Q. Please state your name, age, and occupation? A. I am George T. Haslam, age 42; assistant chief of the law division, Pension Office.

Q. How long have you been employed there? A. I have been employed in the Pension Office since 1893.

Q. Where were you residing, and what was your occupation in September, 1888? A. I was a contest clerk in the General Land Office.

Q. Did you know the late Philip A. Tracy? A. I had a slight acquaintance with him, sir.

Q. When did you make his acquaintance? A. I made his acquaintance just about the time of the organization of the Mutual Investment Company. At that time Mr. Tracy was a clerk in the Post-Office Department.

720 Q. Were you familiar with the circumstances under which the Mutual Investment Company was organized? A. In a measure I was quite familiar with them.

Q. Had you anything to do with the organization? A. No, sir; I had nothing to do whatever with the organization.

Q. Did you become a member? A. Yes, sir; I became a subscriber for stock.

Q. Did you afterwards have any official relation? A. I was made secretary and treasurer.

Q. When were you made secretary and treasurer? A. Immediately after the organization.

Q. When? A. About September 3rd, 1888, I think.

Q. Have you the minute books of the association in your possession? A. I did have them in my possession, but they have become mislaid.

Q. Have you any books of account showing the transactions of the company with the stockholders? A. Yes, sir.

Q. What have you here? A. I have here—I will state in the first instance that the original books which were kept at the time the Mutual Investment Company had square 937, were left in Mr. Mayse's bank, and when Mr. Mayse's bank failed the books were never located. So the books—that is the books so far as square 937 were concerned—were closed out and afterwards carried forward. But from that time, that is from the sale of square 937 up to such time as Tracy died, I think I have a statement of his account here. 721

Q. You have made search for the book of minutes of the proceedings have you? A. No, sir; I have not made search for that. I cannot put my hand on it just now for the simple reason that I had been in the hospital, and at the time I came back the books were packed away. I might be able to find it.

Q. Do you know when, and to what extent Mr. Tracy became a stockholder or shareholder? A. All I know is that Mr. Tracy subscribed for 25 shares of stock in the Mutual Investment Company.

Q. When did he subscribe? A. The books which I have here show that on September 3, 1888, he paid his first assessment on 25 shares, at $5 per share, which amounted to $125. And thereafter these assessments on 25 shares at $5 a share, were paid up until such time as square 937 was sold.

Q. And when was that sold? A. That was sold on or about February third or sixth, 1890.

Q. Square 937 was on Maryland avenue? A. Yes, sir.

Q. Northeast? A. Yes, sir.

Q. In the city of Washington? A. Yes, sir.

722 Q. What sums were paid, in all, by Mr. Tracy in respect to his 25 shares? A. At the time of the sale of square 937 Mr. Tracy had paid in on the 25 shares $85 on each share.

Q. And after the property was sold what disposition was made of the proceeds? What profit resulted? A. A profit of $60 on each share, on the basis of $5.

Q. The par value was what? A. $150. It was assessable up to par.

Q. In respect of his 25 shares, when the property was sold what payment was made to him of the proceeds of the sale? How was settlement made? A. What settlement was made? He had paid in about $2,125 on his stock at the time of the sale of that property and in settlement——

By Mr. Johnson:

Q. Did you say $2,025? A. $2,125, I think; and a proposition was then made for all those who desired to close out their interest with the Mutual Investment Company, that they could do so by surrendering their stock at its then face value of $85; and it appears from the accounts here that Mr. Tracy surrendered 19 shares of stock at $85, which amounted to $1615. His dividends, or profits, on 25 shares at $60 amounted to $1500, and his stock on March 4, 1890, represented——

By Mr. N. Wilson:

Q. The first was $1615? A. Yes, and his profits were $1500.

Q. $1500, even? A. Yes, sir. Then he retained six shares.

723 Q. He retained six shares? A. He retained six shares at $85, which was assessable at $5 a share up to par.

Q. What became of those shares? A. Those shares? They were the last of Mr. Tracy's, and were sold out under a trust.

Mr. Johnson: I object.

By Mr. Wilson:

Q. State, if you please, what other property was purchased by the—— A. The Mutual Investment Company?

Q. Yes, the Mutual Investment Company. A. They purchased the Otterback farm in Anacostia. It was subsequently subdivided and put on the market and known as Hood and Batchelder's addition to Anacostia, and which Mr.——

Mr. Johnson: I note a general objection to any transactions of Mr. Tracy's after the sale of square 937, as being not rebuttal, and as having no relation to any matter offered in evidence in this case by the complainants; also as being irrelevant and incompetent to any issue in this case touching any disposition of money by Mr. Tracy after the 30th day of November, 1888. I object to all transactions subsequent to the 30th day of November, 1888, when he took this receipt, which is put in evidence, and to any transactions other than that of square 937.

By Mr. WILSON:

Q. The total amount then, as I understand, received by Mr. Tracy in respect of square 937, was $3115? A. Yes, sir.

724 Q. And the proceeds of the other shares and the assessments were invested in other property? A. Yes, sir.

Q. Which resulted in an absolute and total loss? A. An absolute loss.

Mr. N. WILSON: I think that is all.

The WITNESS: Did you want to know how he was paid?

By Mr. WILSON:

Q. Yes; how the amount of $3,115 was paid to him? A. The $3,115. Well, he took in lieu of cash bills receivable, which were evidently notes secured on square 937 by people who bought it from the investment company—Jeremiah Frickling and others. He took paper amounting to $3,000. Then there was a difference between $3,000 and $115. $60 of the $115 was applied to an assessment then due on the six shares retained in the other deed; and then the balance was paid in cash, $55.

Q. Do you know whose notes those were? A. I did not handle those notes. I never saw them. I know Mr. Hood and Mr. Batchelder were the trustees, and they handled those notes; but I have rather a distinct recollection that—I think the maker of the note was Jeremiah Frickling, and I don't know but that William H. Manogue was in some way connected with Frickling in the trust of square 937 for the Mutual Investment Company.

Q. Was there one note, do you remember? A. No, sir; there were several notes. I have another recollection that I remember to have been directed by Mr. Hood to call Mr. Frickling to time 725 for non-payment of the interest, and failure to meet those notes at maturity. That is while we hold them. We only held a part. It is my impression perhaps Mr. Tracy——

Q. I want to know whether you have any recollection at all of the number or denomination of the notes? A. No; none whatever.

Q. That sale was made in 1890? A. In February, 1890.

Cross-examination.

By Mr. JOHNSON:

Q. Will you be good enough to let me see that book? A. Yes, sir.

Q. What is this book? A. That is a general day book of the Mutual Investment Company.

Q. Is this the original book? A. It is not the original book. As I stated in my testimony to Mr. Wilson the original books at the time square 937 was closed out, were in Mr. Mayse's bank; and at the time the bank failed those books failed with it. We have never been able to recover them; but that book was made up from slips that I had.

Q. From memoranda? A. It is from memoranda.

Q. Did the Mutual Investment Company own or deal in any other square in Maryland avenue northeast, except square 937? A. No, sir.

726 Q. It acquired that early in September, 1888? A. Yes, sir.

Q. And it disposed of it early in February, 1890? A. Yes, sir.

Q. I understood you to say that the profit was $60 on the shares of $85? A. Yes, sir; that is at the time of the sale of square 937 each stockholder had paid in $85 on a share, and as the result of the sale there was a profit of $60 on each share.

Q. So it made $145? A. $145 for the share.

Q. For each share on which $85 had been paid? A. Yes, sir.

Q. And that was the transaction in relation to square 937? A. Yes, sir.

Q. Can you tell how much money Mr. Tracy had paid in during the month of September, 1888? A. Yes, sir. It is right there. The first payment he paid in, according to these books, was $125.

Q. Do you mean during the whole month of September? A. That is all, yes, sir.

Q. So that on the thirtieth of September he had only paid in $125? A. Just let me look for a second. Here it is (indicating).

Q. Just take the month of September. How much money
727 had he paid in? A. It would appear from these books here
that during the month of September Mr. Tracy had paid in $250.

Q. $250? A. Yes, sir.

Q. That is all he paid in during the month of September? A Yes, sir.

By Mr. N. Wilson:

Q. Two installments? A. Two, of $125 each.

By Mr. Johnson:

Q. Can you tell me how much he had paid in up to and including the thirtieth day of November, 1888? A. What day, sir?

Q. The thirtieth day of November, 1888? A. He had paid in $450.

Q. $450? A. Yes, sir.

Q. Can you say positively from those books that on the thirtieth day of November, 1888, Mr. Tracy had not paid in $3600? A. Yes, sir.

Q. Can you say positively that on that day he had not paid in $1800? A. Yes, sir.

Q. So that if Mr. Tracy claimed at that time to have invested
$1800 in money in that square his claim was incorrect? A.
728 Well, so far as these books would show they were incorrect.
The only way I could get at that would be by making the statement that I understand Mr. Tracy and Mr. Mayse were jointly interested in certain reale-state deals in property in the northeast, located on Maryland avenue.

Q. I am confining myself to square 937. A. No; I answer, no.

Q. Did you have anything to do with square 936? A. No, sir.

Q. Was the net profit on the amount invested in this square 937 50%? A. They regarded it as 50%. I didn't figure on the net profit myself.

Q. It was $60 on $85 anyway? A. Yes, sir. As reported in that (exhibiting paper) the net profit on 200 shares at $60 is $12,000.

Q. You have handed me a report of the secretary and treasurer of the Mutual Investment Company, in print, which bears your name as secretary and treasurer. Were you that officer at that time? A. Yes, sir; I was that officer at that time.

Q. Were these figures made up at that time? A. Yes, sir.

Q. And you know this to be correct? A. Yes, sir. Square 937 was closed out on those figures.

Q. I notice something in this report that I would be glad to have
you explain. It is not clear to me. At the bottom of the first
729 page of the account it is stated that the net profit on 200
shares of stock at $60 per share is $12,000. A. Yes, sir.

Q. Then on the next page, in dealing with $31,000 of real-estate notes, the last item is the same 200 shares at $60, $12,000. That does not mean that there was $120 a share profit, does it? A. No, sir.

Q. It is simply a mode of stating the account in two ways? A. In two ways; yes, sir.

Q. You might explain another thing. This book from which you got certain data was made out from memoranda in your possession after the original books had disappeared with Mr. Mayse? A. The only original book that disappeared with Mr. Mayse was my cash book, and I kept my journal on loose sheets at the time because the transaction was not heavy and I was employed here in the Land Office at the time. Just as any transaction took place I could step into the bank and make a note of it.

Q. Do you know whether anybody, at the time of this closing out of square 937, took his profit in cash or not? A. A number of them did, sir. I did myself for one.

Q. You did. Do you know of any rule or ordinance or regulation of the corporation that compelled Mr. Tracy to take his profits in any other form? A. No, sir. It was a voluntary act on his part.

Q. Referring to this report which you have exhibited to
730 me, this was made at the time of the transaction from data
in your possession, which you knew to be correct? A. Yes,
sir.

Q. And the statement there that the net profit on each share of stock was $60 is correct? A. Yes, sir.

Mr. Johnson: I offer this report in evidence as part of Mr. Haslam's examination, marked "Exhibit Haslam No. 1."

(The report referred to is in the words and figures following, to wit:)

"*Report of the Secretary and Treasurer of the Mutual Investment Company of Washington, D. C., from September* 3, 1888, *to February* 6, 1890.

Officers:

William Mayse, president.
M. I. Weller, vice-president.
Geo. T. Haslam, sec'y and treas.
Jas. F. Hood, Jos. F. Batchelder, trustees.

Auditing committee:

William Hart. Geo. H. La Fetra. Samuel D. Luckett.

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Assets and Liabilities.

Gross proceeds of sq. 937		$42,721.36	
Real-estate notes paid		....	$21,852.98
Commission on sale		....	1,281.64
Total expenses:			
Grading	$500.00		
Hood's bill, &c.	47.00		
Printing	33.60		
Seal	3.50		
Books	3.95		
Postal cards	2.20		
Papers in sale	25.00		
Recording and notary	3.50		
Paid secretary and treasurer on account of salary	23.94		
Taxes	91.76		
		....	734.45
Cash paid at time of purchase		....	450.00
30 full-paid shares of stock @ $150.00 per share		....	4,500.00
Assessable stock (cash paid in)		....	14,450.00
Interest paid on notes		....	1,852.29
Paid secretary and treasurer on account of salary		....	50.00
Received cash on account of assessable stock		14,450.00	
Net profit on 200 shares of stock @ $60.00 per share		....	12,000.00
		$57,171.36	$57,171.36

732 (Page 3.)

Real-estate notes on hand........................	$31,000.00	
Difference due full-paid stock	....	$1,950.00
200 shares of stock @ $85.00......................	....	17,000.00
Due secretary as above..............................	....	50.00
Net profit; 200 shares @ $60.00	....	12,000.00
	$31,000.00	$31,000.00

The above is a true and correct statement of the business of the company from date of organization up to and including the sale of square No. 937.

GEO. T. HASLAM,
Secretary and Treasurer.

We, the undersigned members of the auditing committee, have examined the books and papers of the secretary and treasurer, and have found them correct.

WILLIAM HART,
SAMUEL D. LUCKETT,
Auditing Committee."

By Mr. JOHNSON:

Q. Did the Mutual Investment Company have any transactions in any other square on Maryland avenue northeast? A. No, sir.

Q. What would *be* the total stock subscription of Mr. Tracy have
amounted to on the thirtieth day of November, 1888, if he
733 had paid it all up in money? A. If he had paid it all up in
money—$3750.

Redirect examination.

By Mr. N. WILSON:

Q. Mr. Haslam, Tracy you said kept some of his stock? A. Yes, sir.

Q. Did many of the others? A. Oh! yes, sir; the majority of the stockholders did. A great many, just like myself—the poorer fry—took their dividends in cash, and part retained their stock and waited for it to go up to par.

It is agreed by and between counsel for the respective parties that the examiner may sign the deposition in behalf of this witness.

GEORGE T. HASLAM,
By the Examiner, by Consent.

The further taking of these depositions was thereupon adjourned.

734 WASHINGTON, D. C.,
WEDNESDAY, *March 26th*, 1902—3 o'clock p. m.

Met pursuant to agreement of counsel at the office of Nathaniel Wilson, Esq., Pacific building, Washington, D. C.

Present on behalf of the complainants, Mr. Johnson.

Present on behalf of the defendants, Mr. Clarence R. Wilson.

It is agreed between counsel for the complainants and defendants that for the purposes of this case square No. 649, mentioned in the deed from Philip A. Tracy to Erle H. Turner, being "Exhibit E. H. T. No. 13," shall be taken to be of the value of $18,000.

Counsel for the defendants thereupon offered in evidence agreement of counsel as to certain letters of the defendant J. J. Darlington, which is filed herewith, marked "Exhibit Wilson No. 1."

Said agreement is in the words and figures following, to wit:

"EXHIBIT WILSON NO. 1."

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET ALS., Complainants,
vs.
J. J. DARLINGTON, GEORGE W. GRAY, Executors of Phillip A. Tracy, Deceased, Defendants.
} In Equity. No. 20552.

735 It is agreed that the following copies of the letters from J. J. Darlington to Erle H. Turner may be filed in evidence in lieu of the originals thereof.

J. J. Darlington, attorney-at-law; office, 410 5th St. N. W.

WASHINGTON, D. C., *Sep. 16th*, 1898.

E. H. Turner, Esq., Phila., Pa.

DEAR SIR: Mr. Tracy's will does not mention any such trusts as that indicated in your telegram.

Yours very truly,
(S'g'd) J. J. DARLINGTON.

"J. J. Darlington, attorney-at-law; office, 410 Fifth street N. W.

WASHINGTON, D. C., *Sept.* 15, 1898.

E. H. Turner, Esq., 1917 Col. Ave., Phila., Pa.

DEAR SIR: Your letter, addressed to the late P. A. Tracy, mailed on the 14th inst. has been referred to me, one of his executors.

Mr. Tracy died in July last, leaving a last will and testament appointing George W. Gray and myself executors of his estate. Is there anything that we can do for you?

Yours truly,

(S'g'd) J. J. DARLINGTON."

W. G. JOHNSON,
Sol'r for Compl'ts.
NATH'L WILSON &
CLARENCE R. WILSON,
Sol'c'rs for Def'd'ts.

736 Counsel for the defendants also offered in evidence agreement of counsel as to notes and deeds of trust of Caroline Isdel and Mary J. Lewis, which is filed herewith, marked "Exhibit Wilson No. 2."

Said paper is in the words and figures following, to wit:

"EXHIBIT WILSON No. 2."

It is admitted by counsel for the complainants that the two notes of Caroline Isdel, described in "Exhibit Erle H. Turner No. 22" and amounting to the sum of $1335.20 were secured by a deed of trust to Brainard H. Warner and George E. Emmons, dated April 30th, 1885, and duly recorded in Liber 1120 folio 443 *et seq.*, of the land records for said District of Columbia, conveying the whole of lot five in square nine hundred and forty-three, and that said notes matured April 30th, 1887, and April 30th, 1888, and that by deed of release dated May 22nd, 1888, and acknowledged by said trustees, Warner and Emmons, on May 23rd, 1888, and duly recorded in Liber 1322 folio 154 *et seq.* of said records the said deed of trust was released, the said release reciting that the indebtedness secured by said deed of trust had been paid and that the said notes had been produced, marked paid and cancelled, and exhibited to the trustees.

It is also admitted by counsel for complainants that the three notes of Mary J. Lewis, described in the said "Exhibit Erle H. Turner No. 22," amounting to the sum of $1200, were secured by deed of trust to George E. Emmons and Andrew K. Browne, dated the 8th day of January, 1886 and duly recorded in Liber 737 1161 folio 302 *et seq.*, of said land records, conveying lot seventy in B. H. Warner's subdivision of part of lot 27 in square five hundred and eighteen, and that said notes matured on the 8th of January, 1888, 8th day of January, 1889 and 8th of January, 1890, and that by deed of release dated August 30th, 1888, and acknowledged December 8th, 1888, by said trustees, Emmons and Browne, and duly recorded in Liber 1358, folio 55 *et seq.*, of said land records, the said deed of trust was released, the said release reciting that the said indebtedness had been fully paid and that the said notes had been produced marked paid and cancelled and exhibited to said trustees.

And it is agreed that these admissions shall take the place of the duly certified copies of the said deeds of trust and deeds of release to avoid encumbering the record with said certified copies of said deeds of trust and deeds of release.

NATH'L WILSON AND
CLARENCE R. WILSON,
Sol'c'rs for D'f'd'ts.
W. G. JOHNSON,
Sol'r for Compl'ts.

Counsel for the defendants also offered in evidence certified copy of the inventory and account of appraisers in the matter of the estate of Phil*l*ip A. Tracy, and agreed statement of facts relating thereto, which are filed herewith, marked "Exhibit Wilson No. 3."

The agreed statement of facts above referred to is *as* in the words and figures following, to wit:

738 In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET ALS., Complainants,
vs.
J. J. DARLINGTON, GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased, Defendants.
} In Equity. No. 20552.

Agreed Facts.

The following statement of facts is hereby admitted to be true, and on behalf of the complainants and the defendants the facts therein set forth are to be held and considered by the court as though established by competent and sufficient evidence.

1. That the paper-writing purporting to be the last will and testament of Philip A. Tracy filed and admitted to probate in the supreme court of the District of Columbia holding a special term for orphans' court business and referred to in the bill of complaint was received by the defendant, George W. Gray, from Francis L. Shipley at Providence hospital, the day after the death of said Tracy, and at the same time and place said Gray received from said Shipley the envelope directed "To my executors," and the paper contained therein produced and given in evidence by said Shipley and marked "Shipley Exhibits 3 and 4," said paper being set out in the 14th paragraph of the answer to the defendants.

739 2. That the defendants, Joseph H. Darlington and George W. Gray, immediately after the death of said Philip A. Tracy, took possession of all the property of said Philip A. Tracy which they were able, after careful search and inquiry to find, and when letters testamentary were issued to them they at once made and returned to the proper court an inventory of said property.

Said inventory, a duly certified copy of the same being filed herewith and marked "Darlington and Gray Exhibit 1" contains a full and true account and description of all the property belonging to and constituting the estate of said Philip A. Tracy which came into their hands and which they were able to discover, and they have not since said inventory was made received any other securities or money or other valuable things except as income, dividends or proceeds of sale of the property described in said inventory and accounted for in their account filed in said court on the 29th day of May, 1900, a true copy of said account being filed herewith and marked "Darlington and Gray Exhibit 2," and such additional income as has accrued since the date of said account.

Said defendants have not since said inventory was made received into their possession any property of said Tracy, or belonging to his estate, other than that described in said inventory, except the income from said property or the proceeds of the sale of parts thereof.

3. That said defendants, Joseph J. Darlington and George W. Gray, have not, nor has either one of them, received into their possession, as executors of the will of said Philip A. Tracy, or in any other capacity, the notes and securities described in the 740 seventh paragraph of the bill of complaint, or any one or more of said notes and securities, and they have no knowledge nor are there any papers or books or entries in the books that have come into their possession, as executors, as aforesaid, showing, or tending to show, that any of the notes, securities or property of any kind belonging to the estate of said Philip A. Tracy were purchased or obtained by or through said notes or securities described in the 7th paragraph of the bill of complaint, nor showing from what source he derived the money with which he purchased any of the property belonging to his estate.

4. That the only knowledge or information defendants have obtained from and the only information conveyed to them by the books, papers or memoranda which came into their possession as executors, as aforesaid, in respect to the notes and securities described in the 7th paragraph of the bill of complaint, are contained in and appear from the receipt or memorandum set out in the twentieth paragraph of the answer to the bill of complaint, and which has heretofore been produced and given in evidence in this cause and is marked Exhibit T. M. T. No. 2.

NATH'L WILSON,
Solicitor for Defendants.
W. G. JOHNSON,
Solicitor for Complainants.

Jan'y 4. 1902.

741 Counsel for the defendants also offered in evidence stipulation as to the deposition of Eugene W. Stark, which is filed herewith, marked "Exhibit Wilson No. 4."

The above-mentioned paper is in the words and figures following, to wit:

"EXHIBIT WILSON No. 4."

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL.
vs.
JOSEPH J. DARLINGTON ET AL. } No. 20552. In Equity.

It is hereby stipulated and agreed by and between counsel for complainants and defendants that no objection shall be taken to the deposition of Eugene W. Stark, based upon the fact that the notary taking the deposition was misnamed in the commission as A. C. Draper, instead of A. H. Draper.

W. G. JOHNSON,
Counsel for Complainants.
NATH'L WILSON &
CLARENCE R. WILSON,
Counsel for Defendants.

(The testimony on behalf of the defendants was thereupon announced closed.)

E. L. WHITE,
Examiner in Chancery.

742 DISTRICT OF COLUMBIA, *ss:*

I, Enoch L. White, an examiner in chancery in and for the District of Columbia, do hereby certify that the foregoing depositions were taken down before me in shorthand at the times and places mentioned in the captions thereof from the oral statements of the said witnesses, reduced to typewriting, and subscribed by me in lieu of said witnesses, by consent of counsel for the respective parties; that said witnesses were by me first duly sworn to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy. I further certify that I am not of counsel, nor in anywise interested in the result of said cause.

E. L. WHITE,
Examiner in Chancery.

743 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 742, inclusive, and contained in two volumes, marked respectively "Volume I" and "Volume II," to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 20,552, equity, wherein Erle H. Turner, *et al.* are complainants, and Joseph J. Darlington *et al.* executors of Philip A. Tracy, deceased, are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 4 day of December, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

744 In the Court of Appeals of the District of Columbia.

JOSEPH J. DARLINGTON ET AL., Appellants,
vs.
ERLE H. TURNER ET AL., Appellees.
No. 1266.

Stipulation.

The subjoined copy of the deposition of Eugene W. Stark having been, by accident, omitted from the transcript of record filed herein, it is hereby stipulated, by and between counsel for appellants and appellees that the same, together with this stipulation, be annexed to and made a part of the transcript of record in this cause.

NATH'L WILSON,
CLARENCE R. WILSON,
Counsel for Appellants.
WM. G. JOHNSON,
Counsel for Appellees.

(Endorsed:) No. 1266. Joseph J. Darlington, *et al.* appellants, *vs.* Erle H. Turner, *et al.* Stipulation as to omitted deposition. Court of Appeals, District of Columbia. Filed Dec. 22, 1902. Robert Willett, clerk.

745 *Stipulation.*

Filed March 7, 1902.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL.
vs.
JOSEPH J. DARLINGTON ET AL.
No. 20552. In Equity.

It is hereby stipulated and agreed by and between counsel for complainants and defendants that a commission may forthwith issue from the supreme court of the District of Columbia to A. C. Draper, notary public, of Louisiana, Pike county, Missouri, to take the deposition of Eugene W. Stark, as a witness for the complainants, upon the interrogatories and cross-interrogatories hereto attached; and that a copy of all papers or book entries exhibited by the witness in his testimony may be made by the commissioner taking his testimony and annexed to and returned with the same, in lieu of the originals.

It is further stipulated and agreed by and between the said counsel that the said deposition, when returned, may be read in evidence in this cause, subject to every objection which might be made to the questions and answers if the witness were personally present testifying, and to such objections to the copies of papers or book entries, returned with the deposition as might lawfully be made to the originals at the hearing, and also that in the event said questions or the answers thereto shall be held by the court to be inadmissible, the cost of taking the deposition shall be paid by the complainant.

W. G. JOHNSON,
Cuunsel for Complainants.
NATH'L WILSON,
Counsel for Defendants.

746 *Direct Interrogatories to be Propounded to Eugene W. Stark, a Witness for Complainants.*

1. Please state your name, age, residence and the business in which you are engaged.

2. State if you are a member of Stark Brothers Nurseries and Orchards Company of Louisiana, Missouri, and if yes, state what, if any, official relation you hold to said company.

3. State if you have the custody and care of the books, papers and records of the business of said company.

4. If your answer to the third interrogatory shall be yes, state if there is any book of said company containing the record of any business transactions of said company with one Justin E. Sowers, at Amarillo, Potter county, Texas, showing the date of such transactions and the amounts thereof, and all sums paid him by said company by way of commissions, salary, expenses, or otherwise.

5. If your answer to the fourth interrogatory shall be yes, produce and exhibit to the commissioner taking your deposition all books or records of said company in which any transactions of said Justin E. Sowers with said company appear, and permit the commissioner to make and annex to your deposition a full and complete copy thereof.

6. State whether or not the said Justin E. Sowers had any other business transactions with said company than such as are
747 shown by the books produced by you and exhibited to the commissioner, and if your answer shall be yes, state fully the whole of said transaction.

Cross-examination waived.

NATH'L WILSON,
Counsel for Defendants.

748 *Answers to Interrogatories.*

Ans. No. 1. Eugene W. Stark, 36 years, Louisiana, Missouri, nursery business.

Ans. No. 2. I am a member of said company and my official relation to it is that of secretary.

Ans. No. 3. I have.

Ans. No. 4. There is such a book. It is Ledger "D."

Ans. No. 5. This book designated as Ledger "D" contains the only record and all the record of any transactions between Justin E. Sowers and Stark Brothers Nurseries and Orchard Company of Louisiana, Missouri, and said witness exhibits to me said entries therein which I copy in full, exactly as the said entries there appear and annex them hereto marked "Exhibit A with deposition of Eugene W. Stark."

Ans. No. 6. Justin E. Sowers never had any other business transactions with said company than such as are shown in the book entries produced by me in answer to the fifth interrogatory.

EUGENE W. STARK.

749 *Stark Bros. Nurseries & Orchards Co. in Account with J. E. Sowers, Louisiana, Mo., Vernon, Tex.*

EXHIBIT "A" WITH DEPOSITION OF EUGENE W. STARK.

1892.					
Aug.	27.	To dft..................	141	5 30	
Sept.	10.	" "	159	12 10	
"	14.	" "	169	2 70	
"	23.	" "	177	2 30	
"	29.	" "	181	3 60	
Oct.	13.	" "	211	8 75	
	22.	" 75 % Currie ord...... ... 1.50		1 20	
1893.					
Feb'y	21.	" d'ft..............................	373	1 05	
Aug.	20.	By premium..................................		....	35
Dec.	22.	" 25 % Vernon..................	$21.85		5 45
"	28.	" 25 % Claude..................	33.30	....	8 30
1893.					
Jan'y	11.	" 25 % Amarillo................	91.55	....	22 90
				37 00	37 00

Endorsed on cover: District of Columbia supreme court. No. 1266. Joseph J. Darlington *et al.*, executors, appellants, *vs.* Erle H. Turner *et al.* Court of Appeals, District of Columbia. Filed Dec. 16, 1902. Robert Willett, clerk.

Transcript of Record.

Court of Appeals, District of Columbia, October Term, 1904.

No. 1460.

JOSEPH J. DARLINGTON AND GEORGE W. GRAY, EXECUTORS OF Philip A. Tracy, Deceased, Appellants,

vs.

ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, AND LUNETTE Turner, by Wilmer Turner, Their Next Friend.

Appeal From the Supreme Court of the District of Columbia.

Filed August 24, 1904.

In the Court of Appeals of the District of Columbia.

JOSEPH J. DARLINGTON ET AL., Executors, Appellants,
vs.
ERLE H. TURNER ET AL.
} No. 1460.

Supreme Court of the District of Columbia.

ERLE H. TURNER, WILMER TURNER, Ashby Turner, and Lunette Turner by Wilmer Turner, Their Next Friend, Complainants.
vs.
JOSEPH J. DARLINGTON AND GEORGE W. Gray, Executors of Philip A. Tracy, Deceased, Defendants.
} No. 20552. In Equity.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:—

Petition.

Filed February 19, 1904.

In the Supreme Court of the District of Columbia.

EARL TURNER *vs.* GEORGE W. GRAY ET AL. } Equity. No. 20552.

Petition of George W. Gray and Joseph J. Darlington for instructions.

Your petitioners, George W. Gray and Joseph J. Darlington, executors under the will of the late Philip A. Tracy, respectfully show to the court that, among the assets of the said estate, is a one-tenth share in a syndicate, *on* which William E. Edmonsten, Esquire, is the trustee and representative, and which owns square numbered six hundred and forty-nine (649), in the city of Washington, in the District of Columbia; that, since the death of Philip A. Tracy, the surviving syndicate holders agreed upon a division in kind among themselves of the twenty lots comprised within the said square; that, at a drawing for the purpose of such distribution, lot one (1), value seven hundred and four (704) dollars, and lot seven (7), value three hundred and twenty-four dollars, fell to the share of the Tracy estate, which Mr. Edmonston is ready to convey to us as executors of said Philip A. Tracy, upon our payment to him of the sum of two hundred and twenty-eight (228) dollars, the two hundred (200) dollars being the contributive share of the said Tracy estate toward the expenses of taxes, etc., for a number of years last past, aad the twenty-eight (28) dollars being the difference between the value of the two lots as appraised, and the said Tracy interest in the syndicate. We file herewith the affidavit of Mr. Edmonston as to the matters and things above stated, and pray the court's instractions in the premises.

JOSEPH J. DARLINGTON.

DISTRICT OF COLUMBIA, *ss:*

We, George W. Gray and Joseph J. Darlington, on oath say that we have read the foregoing petition by us subscribed and know the contents thereof, and that the allegations therein contained are true to the best of our knowledge, information and belief.

JOSEPH J. DARLINGTON.

Subscribed and sworn to before me this — day of February, A. D. 1904.

—— ——.

William E. Edmonston being duly sworn deposes and says, that he is one of the trustees under a certain deed in trust for the benefit of ten (10) equal share holders or beneficial owners of square number six hundred and forty-nine (649), but that he has no beneficial interest in any part of said square; that the said beneficial owners or their representatives being desirous that the trust under which affiant and his co-trustee hold said square should be terminated, agreed that *that* the trustees should sell at private sale to each of the beneficial owners of the two lots in said square to be selected in such way that the aggregate value of the lots to be taken by the several owners should be as nearly equal as possible, and that the assessments for taxation of said lots for the year 1903, should be taken as a basis of valuation of the several lots, the aggregate valuation of the square being $10,133., subject to the modification however, that the $133. should be deducted from certain lots which were considered to be relatively assessed higher than the other lots; that upon this adjustment, the twenty lots in the square were grouped into ten groups of two lots each with as nearly equal aggregate value as possible and the owners or representatives of the beneficial owners met at the office of affiant on November 20th, 1902 and by a drawing determined to which beneficial owners the several groups of lots should respectively go, it being agreed and understood that any beneficial owner drawing a group of lots of the aggregate valuation in excess of $1,000., should pay the excess, and that the beneficial owner drawing a group valued as aforesaid less than $1000., should pay the deficiency. That in this drawing lot one (1) valued at $704., and lot seven (7) valued at $324., were selected for the Tracy estate. That the drawing was in all respects fairly made and that the value set upon said lots one (1) and seven (7) is a fair and just valuation in relation to the value of the other lots in said square. That pursuant to the terms of said deed in trust, the trustees have heretofore levied for the purpose of paying taxes, certain assessments against the several beneficial owners, the last two assessment. were for $100., each against each shareholder.

The amount payable by the Tracy estate in respect to the last two assessments is $200., and no part thereof has been paid, although long since payable.

W. E. EDMONSTON.

Subscribed and sworn to before me this 29th. day of January, A. D. 1904.

[SEAL.]

CHARLES E. MARSH,
Notary Public, D. C.

Order Requiring Executors to Pay to William E. Edmonston the Sum of $228.

Filed February 19, 1904.

In the Supreme Court of the District of Columbia.

EARL TURNER *vs.* GEORGE W. GRAY ET AL.	Equity. No. 20552.

Upon consideration of the petition of George W. Gray and Joseph J. Darlington, executors of Philip A. Tracy, deceased, it is by the court this 19th. day of February, A. D. 1904, ordered that the said executors be, and they hereby are, ordered to pay to William E. Edmonston, out of the moneys in their hands belonging to the Philip A. Tracy estate, the sum of two hundred and twenty-eight (228) dollars, upon the conveyance by said William E. Edmonston to them of lots one (1) and seven (7), in square numbered six hundred and forty-nine (649) in the city of Washington, in the District of Columbia.

THOS. H. ANDERSON, *Justice.*

We consent:

W. G. JOHNSON,
Solicitor for All Complainants in Equity Cause No. 20552.

NATH'L WILSON,
Solicitor for Defendants.

Auditor's Report.

Filed March 9, 1904.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL. *vs.* J. J. DARLINGTON ET AL.	No. 20552. Equity.

On the 10th of October 1902 the court made the following decree in this cause:

First. That the defendants' testator Philip A. Tracy was trustee for the complainants in respect of all of the property and estate of Silas H. Turner being or coming into the hands of said Tracy at and after the death of the said Silas H. Turner.

Second. That the complainants are entitled to an accounting from the defendants as executors of the said Philip A. Tracy of and concerning the money and properties received by said Tracy from said Silas H. Turner.

Third. That this cause be and the same hereby is referred to the auditor of this court to state such account, and that on such accounting the defendants shall be entitled to credit for the sums which it appears from the evidence were paid at various times by the said Tracy in his lifetime to Erle H. Turner, one of the complainants, after said Earle H. Turner had attained his majority.

Fourth. That for the purpose of stating the account herein directed to be stated and of ascertaining what credits the defendants may be entitled to the auditor is to consider all the testimony in the case bearing on that subject and is authorized to take further testimony, as the parties to this cause may desire, as to the correctness of the allegation of the defendants that the money received by Thomas M. Turner from said Tracy was expended for the benefit of the complainants or any of them, that the expenditures were reasonable for the complainants under the circumstances, and that the said Thomas M. Turner was unable to support the complainants, his children, from his own means.

Fifth. Upon the completion of said hearing before the auditor the said auditor shall report to this court the said statement of account and his proceedings under this reference for the final decree of this court thereon.

After due notice the reference being taken up pending an appeal (by stipulation of counsel), I proceeded to hear the parties and their proofs and I file with this report the record of such proceeding including the depositions of non-resident witnesses taken under a commission issued by the clerk of the court upon my certificate as provided by the rule.

The first requisite of this account is the primary liability of Tracy's estate, in other words the amount of funds and securities of Silas Turner held by Tracy or with which he was chargeable at time of Turner's death.

It may be assumed that the business relation and methods existing between Turner and Tracy were substantially as described in Tracy's instructions to his executors. Turner's money was invested in promissory notes of which Tracy had the possession, collecting the interest and the principal when paid and reinvesting such collections in new securities of the same character which he retained sending Turner a memorandum of the transaction.

After the death of Silas Turner there was found among his papers an envelope or jacket endorsed "Notes belonging to S. H. Turner 1888," it contained a list in the hand-writing of Tracy, of the notes, giving the date, name of maker and amount. The date of the last note on the list is given as March 12, 1888. The aggregate principal of these notes is 28,972.10 (211 printed Record).

Evidently all of these securities were in Tracy's possession as late as March 12, 1888.

Silas Turner died in the following September.

When Tracy made the transfer to Thomas Turner on the 30th of November 1888 he took a receipt showing the delivery of notes aggregating in principal 22,802.50 and 337.64 in money. He had previously delivered 439.64 in money being interest which he had collected and was included in the receipt.

The receipt also included an item of 1,800.00 described as " Maryland Avenue lots " which was not delivered but was held by Tracy as an investment of Silas Turner's funds. The aggregate of securities delivered was about 6,000.00 less than of the list held by Silas Turner.

Upon the point of this discrepancy a question of location of the burden of proof is made in argument. I think the rule in this respect is thoroughly established. It being conclusively shown that within six months before Turner's death, Tracy had nearly $29,000.00 principal of securities in his possession as agent or trustee of Turner, the inevitable presumption of law is that of continued possession and accountability.

This rule applies with special force in the present case in view of the business methods prevailing between the parties as described by Tracy. He was to retain possession and control of the investments however their character might change from time to time by collection and reinvestment. (Instructions to executors p. 15 printed Record)

The burden of proof to rebut this presumption being with the defendants they have not been able to meet. The basis of the account therefore must be the statement marked Exhibit Erle H. Turner No. 22.

It appears in evidence that about the month of September 1888 Tracy invested 1,800.00 of this fund in land described as " Maryland Avenue lots " and that it remained so invested until February 6, 1890 when the land was sold and this investment realized the sum of 3,069.25 which was received by Tracy.

Silas Turner died on the 21st of September and a few days later Tracy delivered to Thomas Turner 439.25 in money stating that it was collection of interest and that he, Turner, might have immediate use for funds for funeral and other expenses.

The defendants' testator is to be charged with the sum of 28,972.10 less the 1,800.00 invested in real estate and with the 439.25 interest collected as the starting point of the account and with 3,069.65 realized from the real estate investment as of February 6, 1890.

At the time of Tracy's delivery of securities to Thomas Turner he also paid him a further sum of 337.64 in money.

The proof does not show whether this was collection of interest or principal. If it was interest the fund in Tracy's possession was increased by that sum, but in the condition of the proof I do not feel warranted in charging it as a part of his primary liability.

It is conceded that Tracy should have credit for the sum of $630 appropriated for funeral expenses and other charges.

From this point the fund is treated as devided into four equal portions and accounts stated severally with the four devisees.

The claim of the complainants that Tracy should be charged with interest is disputed by the defendants, if the record presented any reasonable excuse for Tracy's act in delivering this fund to Thomas Turner there might be some ground for acquitting him of liability for interest.

By his own admission Tracy expressly assumed the obligation to hold the fund, securities and money, subject to the direction of Silas Turner and as expressly failed to comply with that direction though given him in the most impressive form.

The court in its decree and opinion has found Tracy's act to be the deliberate abandonment of a trust which he had assumed not only by the original agreement but also in the preparation of Turner's will.

Taking up the accounts separately of the four children and charging the defendants in each case with a one-fourth share of the principal fund for which I hold Tracy to have been accountable I have to consider claims made by the defendants for credits in each of these accounts.

Erle Turner became of age in October 1889. Early in that year Thomas Turner expended the sum of $400 for medical treatment of Erle, the expenditure being made from the fund which Thomas Turner had received from Tracy and it is conceded that the defendants are entitled to credit for this sum.

After Erle arrived at age he received from Tracy various sums of money as set forth in the proof in this cause. Several of these payments had been made prior to the date of the first receipt, September 6, 1893 (Exhibit E. H. T. Cross Ex. No. 1), which acknowledges the receipt from Tracy at sundry times—the sum of $550 on account of money in his hands belonging to the estate of the late S. H. Turner. Thereafter sundry payments were made until the whole aggregated the total of $1,365, for which the defendants are entitled to credit in the account with Erle.

In addition to these a further credit is claimed by the defendants growing out of the payment by Thomas Turner to Erle of the sum of $1,200, in money and the delivery to Erle of two of the promissory notes which formed a part of the Silas Turner's estate received from Tracy. This transaction which occurred in April 1891, as described by both of the parties, sets forth that after the purchase and equipment of the farm near Vernon Texas, Erle was left in charge with an agreement that of the proceeds of the crops raised. Erle should receive one-half and Thomas Turner the other half and the crop of the year 1890 is stated to have yielded the sum of $900. The crop of 1891 had not been harvested at the time of this alleged settlement but was estimated at $3,000, and upon this basis the settlement was made taking into account, I presume, the expenses in order to ascertain the net proceeds. Thomas Turner stated that he also had received from Erle while a boy, between two and three hundred dollars for safe keeping and that this entered into the settlement by which the said sum of 1,725. was paid to Erle in money and notes. It is conceded that both money and notes were a part of the Silas Turner estate, and it is earnestly contended that Erle should be charged with this and the defendants credited. It does not appear that at the time of his transaction Erle had knowledge or information of the character of his uncle's will, and in his own testimony he asserts his entire ignorance of the interest given to him by the will until long after the date now under consideration. It does not distinctly appear in what form the promissory notes of the Silas Turner estate were drawn either as to payee or the manner of endorsement. There are in the schedule of notes delivered *to* by Tracy to Thomas Turner November 30, 1888, a general description of two notes answering in respective amounts the two notes delivered to Erle, one being a note of Roth and Moore for $325. bearing date 13th of June 1888 and the other a note of E. V. Jarvis for two hundred dollars bearing date November 6, 1888. For the complainant Erle it is argued that it should be assumed that these two notes were negotiable by transfer from hand to hand and that the proof showing a good consideration for their transfer Erle should be treated as any other innocent purchaser for value.

Under all the conditions surrounding this rather singular transaction specially as to the estimate of proceeds of a crop not harvested at the time of settlement and in the absence of more definite information as to the character of negotiability of these notes which Thomas Turner father of Erle expressly knew were the property of his children, I am of the opinion that Erle should be charged with the sum of the two notes.

Another claim made by the defendants for credit as against Erle's portion arises from what seems to have been an attempt on the part of Tracy to convey to Earle Turner an interest in some real estate the exact character or extent of which does not distinctly appear in the proof. It does appear however, that the attempt to transfer this interest was not completed in that it never was accepted by Erle, he in fact having no knowledge of the attempt until after the death of Tracy. I am unable to find any reason for charging Erle with any sum on account of this attempted conveyance. The document was never recorded and the original is among the exhibits in this proceeding.

In respect of the account with Wilmer Turner credit is claimed for money expended for her maintenance and education from and after January 1, 1889.

The requisite conditions to support a claim of this character are general inability of the father to provide for the child and the child's possession of an estate or income available for that purpose.

Upon the question of Thomas Turner's ability to maintain and support his family the evidence established the following facts and conditions:

In the year 1888 the family were living in Minden, Louisiana upon a farm, the title to which was in Turner's wife. He held the position of deputy-clerk of the district court which yielded an income of about $1,000 per year it depending upon the amount of fees of the office, of which he as deputy-clerk received one-third. Other employment more or less irregular added from two to three hundred dollars a year to his emoluments. To a limited extent the farm furnished food and fuel for his family which consisted of himself, his wife and four children: Erle, a son 19 years of age, Wilmer a daughter 13 years of age, Ashby a son, 8 years of age and Lunette a daughter 5 years of age. In August 1888 he came to Virginia where his brother Silas was living and remained until the death of Silas and afterwards until the last of the December following when he returned to Minden. The entire family left Minden about August 1889 and after a few months' stay at Ennis, reached Vernon Texas in December of that year. In this place Thomas Turner had purchased land and erected a dwelling of which they took possession.

He had also purchased a farm near Vernon which he improved and supplied with stock, machinery &c.

In June 1890 he took the family to Virginia (excepting Erle) and from that time until 1894 they lived at various places in that vicinity and in travel.

Turner undertakes to describe the manner in which he used the proceeds of the property received from Tracy and among other items he specifies expenditures of $9,000.00 for the Vernon residence, 7,550.00 for the farm and its equipment and preparation for crops, 1000.00 for expenses of wife and three younger children from January 1889 to June 1900, 1,500.00 for expenses of wife and two youngest children from June 1890 to January 1894 besides 1,250.00 for travelling expenses of wife and younger children and his sister and niece.

It is sufficiently established in evidence that after the death of Silas Turner, Thomas Turner had no means or income for the support of his family except that derived from the estate of Silas Turner which was the property of his children. I leave out of consideration the proceeds of sale of his wife's property in Minden as the most of that was absorbed by payment of an existing indebtedness.

It is equally well shown that the children were exclusively entitled to the property which the father received from Tracy and had in his possession and that it was available and used for their support.

Of the property and funds of Silas Turner's estate which came to the possession of Thomas Turner there was invested as follows:

For the residence of the family in Vernon Texas, land 750.00 building 1,750.00 furniture 500.00 total 3,000.00 For the farm near Vernon 2,500. improvements 800.00 stock and machinery 3200.00 labor &c. 1,050.00 total 7,550.50

These investments furnished support for the family from the time they were made and the only other source from which such support was derived was funds of the same estate which Thomas Turner had drawn from the Washington bank, and such personal service as he rendered in operating the farm.

Upon this condition of proof I find the defendants entitled to credit for the amount expended in support of Wilmer Turner from January 1889 to June 1890 which I fix at the rate of $15 per month.

It is conceded by Miss Wilmer Turner that a credit of $800 should be allowed the defendants for money expended for her education after June 1890.

It must be conceded I think that Ashby was providing with maintenance and support from the Silas Turner estate in the hands of his father until he became of age February 3, 1901. And that Lunette was similarly provided until she became of age December 19, 1903.

I find that $15 per month for each is a reasonable allowance for the cost of such maintenance.

I also allow a share of travelling expenses.

JAS. G. PAYNE, *Auditor.*

SCHEDULE A.

Account of the Defendants as Executors of Philip A. Tracy of Moneys and Properties of Silas H. Turner.

DR.

To amount of promissory notes enumerated in Exhibit Erle H. Turner No. 22		$28,972.10
Less amount invested in real estate transaction September 3, 1888		1,800.00
		$27,172.10
To interest collected and in hand September 28, 1888		439.25
		27,611.35

CR.

By advanced for funeral expenses and other charges		630.00
		$26,981.35
Amount brought forward		$26,981.35
To Erle H. Turner:		
One-fourth to Schedule B	$6,745.33	
Wilmer Turner:		
One-fourth to Schedule C	6,745.33	
Ashby Turner:		
One-fourth to Schedule D	6,745.33	
Lunette Turner:		
One-fourth to Schedule E	6,745.33	
		26,981.32
		.03

DR.

To amount realized and received by Tracy from real estate transaction, February 6, 1890	3,069.65
	$3,069.68
To Erle H. Turner: One-fourth to Schedule B	767.42
Wilmer Turner: One-fourth to Schedule C	767.42
Ashby Turner: One-fourth to Schedule D	767.42
Lunette Turner: One-fourth to Schedule E	767.42
	$3,069.68

JAS. G. PAYNE, *Auditor.*

SCHEDULE B.

Account of the Defendants with Erle H. Turner.

DR.

To his share of first division of the fund per Schedule A		$6,745.33
Interest from November 30, 1888 to February 6, 1890	$478.91	
Less amount expended from this fund in 1889	400.00	
	78.91	
His share of second division per Schedule A, February 6, 1890	.....	767.42
		$7,512.75
Interest from February 6, 1890 to February 1, 1904	6,304.45	
	$6,383.36	

CR.

By sundry payments admitted	1,365.00	
Note of Roth & Moore	325.00	
" " E. V. Jarvis	200.00	
		1,890.00
Balance of interest February 1, 1904		$4,493.36

JAS. G. PAYNE, *Auditor.*

SCHEDULE C.

Account of the Defendants with Wilmer Turner.

DR.

To her share of first division, of the fund per Schedule A.		$6,745.33
Interest from November 30, 1888, to February 6, 1890	$478.91	
Less expended for her maintenance from January 1, 1899 to June 1890	270.00	
	$208.91	
Her share of second division of fund per Schedule A	....	767.42
		$7,512.75
Interest from February 6, 1890 to February 1, 1904	6,304.45	
	$6,513.36	

CR.

By expended for maintenance and education after June 1890	800.00
Balance of interest February 1, 1904	$5,713.36

JAS. G. PAYNE, *Auditor.*

SCHEDULE D.

Account of the Defendant with Ash-y Turner.

DR.

To his share of first division of the fund per Schedule A.		$6,745.32
Interest from November 30, 1888 to February 6, 1890	478.91	
His share of second division of the fund per Schedule A	....	767.42
		$7,512.75
Interest from February 6, 1890 to February 1, 1904	6,304.45	
	$6,783.36	

CR.

By expended for maintenance and education from January 1, 1899 to February 3, 1901, at $15.00 per month.........	2,176.50	
Portion of travelling expenses.	156.25	
		2,332.75
Balance of interest February 1, 1904...		$4,450.61

JAS G. PAYNE, *Auditor.*

SCHEDULE E.

Account of the Defendants with Lunette Turner.

DR.

To her share of first division of the fund per Schedule A.		6,745.33
" Interest from November 30, 1888 to February 6, 1890......................	478.91	
" Her share of second division of the fund per Schedule A..................	......	767.42
		7,512.75
" Interest from February 6, 1890 to February 1, 1904......................	6,304.45	
	$6,783.36	

CR.

By expended for maintenance and education from January 1, 1889 to December 19, 1903 at 15.00 per month..........	2,694.00	
Portion of travelling expenses.	156.25	
		2,850.25
Balance of interest February 1, 1904....		3,933.11

JAS G. PAYNE, *Auditor.*

TURNER
vs.
DARLINGTON.

OCTOBER 20, 1902.

Hearing pursuant to notice.

Mr. W. G. Johnson appeared for the complainant and Mr. Nathaniel Wilson for the defendant.

After reading the order of reference and some discussion between the counsel, the hearing was adjourned subject to notice at the request of the counsel for the defendant to await the action of the defendant in the matter of an appeal to the Court of Appeals.

DECEMBER 22, 1902.

Hearing pursuant to notice.

Mr. W. G. Johnson appeared for the complainant and Mr. Nathaniel Wilson for the defendant.

Mr. Johnson states the respective claims of the complainant relative to the original liability of the defendant and by agreement the further hearing was continued to Friday, January 2, 1903 at 10 o'clock, a. m.

FRIDAY, *January* 2, 1903.

Hearing pursuant to adjournment.

Present: Mr. Nathaniel Wilson and Mr. Johnson.

Mr. Johnson referring to the evidence in the cause discussed the matter of the primary liability of the defendant and thereupon the hearing was further continued to Friday, January 9, 1903, at 10 o'clock, a. m.

FRIDAY, *January* 9, 1903.

Hearing pursuant to adjournment.

Present: Mr. Johnson and Messrs. Nathaniel and Clarence Wilson.

The first direction of the order of reference was discussed by Mr. Nathaniel Wilson and Mr. Clarence Wilson for the defendant and by Mr. Johnson for the complainant, and that branch of the reference was submitted.

For the further subject of reference this hearing was continued to Friday, January 16, at 10 a. m.

THURSDAY, *November* 18, 1903.—1 p. m.

Hearing pursuant to notice.

Present: Messrs. Nathaniel and Clarence Wilson and Mr. William G. Johnson.

Miss WILMER TURNER having been sworn testified as follows:

By Mr. JOHNSON:

Q. You are of the complainants in this suit?

A. I am.

Q. Will you state whether or not you accompanied your father nd the family on the way to Texas in August 1889?

A. I did.

Q. How long did you remain with the family there?

A. Until June 1890.

Q. Where did they live when they first got there?

A. With a cousin.

Q. What is his name?

A. George Turner.

Q. Is that in the country or in a village?

A. In a village.

Q. What is *his* name?

A. I don't know whether it is Ennis county or not.

Q. What was the size of that home of George Turner's?

A. Why it was a very small house not more than six rooms, I am ure.

Q. Was it a farm?

A. No.

Q. Was it a lot *or* any size?

A. Just a small lot in this little village.

Q. How long did your father and his family occupy that house?

A. My father was not with us there, just my mother and the children.

Q. How many of the children?

A. Three.

Q. Including yourself?

A. No, four including myself, we stayed until just about the first f December.

Q. Who else occupied that house besides George Turner?

A. His wife.

Q. I will ask you to state in what manner they lived in that household as to the character of the table they maintained?

A. They lived very simply in moderate circumstances.

Q. How were the children dressed at that time, what style and general character of clothing did they wear?

A. Very simple clothing, my mother did our sewing.

Q. When you left there in December 1889 where did you go?

A. Near to Vernon.

Q. And what house did you occupy there?

A. A house that my father had built there just before we went ut there.

Q. Is that the same house as to which testimony has been offered n this case?

—. It is.

Q. Will you tell us how big a house that was?

A. It was a frame house, seven rooms.

Q. How many stories?

A. Two.

Q. How long did you remain in that house with the family?

A. Until June 1890.

Q. I wish you would describe as nearly as you can the manner of living of the family during that six months that is as to the table that was kept and the manner in which the children were clothed?

A. Well we kept one servant, we had a simple table, the children were just as they had been, they had all always had simple clothing, during that time we had boarders part of the time.

Q. Did the boarder- also room in the house?

A. Yes.

Q. Occupied some of the rooms?

A. Yes.

Q. Did they pay for that?

A. Yes.

Q. Tell us whether or not the clothing of the children was all expensive or inexpensive?

A. It was material always good but inexpensive.

Q. Do you know by whom it was made?

A. My mother did the sewing.

Q. At that time were you able to do any sewing?

A. No, I could not do anything then.

Q. Can you tell us how many boarders roomed in this little house?

A. Well when we first went to Vernon there was some people, a family of five, two children and three adults they stayed with us possibly a month until their house was finished then afterwards we had a young man board with us.

Q. During that time do you remember whether the table was supplied from any farm produce if so of what character?

A. Well we had cows, poultry and a garden but of course we did not get very much from the garden because we left in June and there was very little that we could use.

Q. You say you had poultry and kept a cow, was the table supplied to any extent from these?

A. Yes.

Q. Well can you state whether or not the poultry, eggs, butter and milk that you used were supplied from the source or purchased?

A. Why they were all supplied from that source, I think, of course I cannot remember positively.

Q. When did you leave there?

A. In June 1890 about the first of the month.

Q. Did you all go?

A. All except Erle.

Q. Where did you go?

A. We went to Clark county, Virginia.

Q. I wish you would state where the family lived during that summer if you know?

A. Why we were with Mr. Sowers part of the time, I left there in July and went to Mrs. Rust who lived near Marshall.

Q. Well do you remember the name of that Mr. Sowers?

A. Justine, I think.

Q. Is it the same Mr. Justine who has testified in this case?

A. Yes.

Q. At the end of the summer where did you go?

A. I went to the Hollins Institute, about the middle of September.

Q. Of 1890?

A. Yes.

Q. Where did the rest of the family go?

A. I think they went to Front Royal.

Q. When they stayed at Sowers' house can you tell me what size house that was?

A. I don't remember the number of rooms I do not think more than eight.

Q. How many stories?

A. Two.

Q. Was Mr.Sowers' family there?

A. Yes.

Q. How many did that family consist of?

A. Mr. Soewrs his wife and three children.

Q. Was that on a farm or in town?

A. On a farm.

Q. What was the style of living there as to whether elegant or simple?

A. Comfortable as persons would on a farm.

Q. What was the style of dress of the children during that time?

A. Very simple.

Q. You went to Hollins Institute in September and how long did you remain there?

A. Until June 1891.

Q. Do you know what the expense was?

A. The tuition was $245, I believe.

Q. Any other expense?

A. My books and stationery.

Q. Do you know what they amounted to?

A. No, I do not.

Q. I show you a memorandum from the Hollins Institute State where you got that and what you know as to its correctness?

A. I wrote for a copy of the bills while there and this was sent to me.

Q. Now what do you say as to its correctness?

A. Of course I do not really know because I never knew at that time what the bill was, but Mr. Turner sent it to me as a copy of my bill as it was rendered at that time.

Q. Do you remember anything about the items charged on it?

A. I remember the tuition and the calisthenics, the books and stationery, I bought from the office in the school.

Q. Do you remember in a general way what you got, what you had?

A. Yes I had the books that were necessary, it was my first year.

Q. Is this the letter that the management sent?

A. Yes.

Q. Did you know Mr. Turner?

A. I met him while I was there, he was only about fifteen or sixteen at the time, he was the grand-son of Mr. Cook who was the manager of the school when I was there.

Q. Is he a relative of yours?

A. Not that I know of.

Mr. JOHNSON: I offer this letter and bill in evidence.

Q., While you were at Hollins that year, did you know where your family, your mother and the other children were?

A. They were in Front Royal and from there they went to Luray and from there to Waynesboro.

Q. Did you see them at either of those places?

A. Yes I went to Waynesboro in June 1891.

Q. Where were they living there?

A. They were boarding there.

Q. In what sort of an establishment?

A. In a private family.

Q. Then where did they go or you go from there?

A. We went to a country place near Greenwood.

Q. How long did you stay there?

A. Until September.

Q. Did they keep house or board?

A. They boarded.

Q. Do you know what rates were charged for the board?

A. No, I do not know, but the usual rate there for summer boarders is $20 a month.

Q. For adults?

A. For adults.

Q. What for children?

A. Very young children were usually half rate, at lease I think that was so in our family.

Q. Did you know of the children going to school while at Waynesboro?

A. They were at the Valley Seminary.

Q. Which children?

A Ashby and Lunette.

Q. Did you make any effort to ascertain the cost of tuition of those children at that seminary?

A. I wrote to Mrs. Winston about it.

Q. Look at this paper which I show you and state if that is her reply?

A. Yes.

Mr. JOHNSON: I offer that in evidence.

Q. Now you stayed in Greenwood until September 1891, is that right?

A. Yes.

Q. Where did you go then?

A. I went to Kleinberg school.

Q. Where did your mother and the other children go?

A. They were at Alderson, West Virginia.

Q. How long did you remain at Kleinberg?

A. Until June 1892.

Q. Did you attend that school more than one year?

A. Yes, I was there three years.

Q. What was the length of the sessions?

A. Nine months.

Q. Commencing when?

A. September.

Q. September to June each year?

A. Yes.

Q. Do you know what the rate there was for board and tuition?

A. $165 a year.

Q. How large a school was that, how many pupils.

A. Twenty or twenty-five.

Q. Was it in a town, village or in the country?

A. In the country.

Q. What was the style of dress that you had while there?

A. Very simple, I needed very little in the way of expensive clothes, I never went anywhere.

Q. Who made your clothes?

A. My mother made most of my dresses, some things she had made.

Q. At that time were you able to do any sewing yourself?

A. I did not do much the first year, but the second year I did some.

Q. Did you?

A. Yes in the summer.

Q. When you finally left Kleinberg had you finished your education?

A. In June 1894.

Q. In the summers of 1892 and 1893 were you with your mother?

A. Yes.

Q. Where was that?

A. Alderson, West Virginia.

Q. Where did she live there?

A. She was keeping house at that time.

Q. Both summers?

A. Yes.

Q. How big a place was that?

A. I really don't know, it was a small town.

Q. How big a house?

A. I think about six or seven rooms.

Q. Do you know whether she owned the house?

A. She rented it.

Q. Do you know what the rent was?

A. I wrote trying to find out but the man to whom I wrote did not remember but the house was renting at that time for 5 or 6 dollars a month.

Q. Do you know when you were there?

A. I do not.

Q. Have any ground?

A. One place had a garden but the second house we had simply had a yard.

Q. Neither was a farm?

A. No.

Q. Anybody else occupy the house or any part of it?

A. No.

Q. In what style did they live in that house?

A. Very simply, economically.

Q. What sort of a table did your mother keep?

A. Why it was a very simple table.

Q. After you left Kleinberg in June 1894 where did you go?

A. I went out to West Virginia to visit one of my school mates.

Q. How long did you stay?

A. I was there six weeks.

Q. Then where did you go?

A. Back to Kleinberg.

Q. And how were you occupied there?

A. I was visiting the teachers.

Q. How long did you remain there?

A. I began to teach in September 1894, and taught until June 1895.

Q. Where were your mother and the other children at that time?

A. They were in Texas.

Q. In Vernon?

A. Yes.

Q. In June 1895 after the school closed did you go anywhere?

A. In July I went to Texas.

Q. Whereabouts in Texas?

A. To Vernon.

Q. How long did you remain there?

A. Until September 1896.

Q. Little over a year?

A. Yes.

Q. I will ask you to state as nearly as you can, what you found to be the conditions at the home in Vernon, the condition of the family, the living?

A. Well I found we had a great deal of trouble making both ends meet at that time, we had to live very plainly, the two children were going to the public school.

Q. Ashby and Lunette?

A. Yes.

Q. How were they provided with clothes?

A. They had very little in the way of clothes.

Q. Do you know who provided them and from what source?

A. Ashby really did not have anything bought for him, Erle had given him some of his clothes?

Q. How with respect to Lunette?

A. Most of hers were made out of my old things.

Q. Who did that?

A. My mother and myself.

Q. What was the condition of the house?

A. That was very plainly furnished, most of the furniture had been sold we had only I think three rooms furnished besides the kitchen and dining room.

Q. I will ask you to state *what* at that time you made any contribution of money to the family's subsistence?

A. Yes, I don't know how much, I used what money I had saved from my teaching the year before.

Q. Can you give us any idea how much that was, as near as you can?

A. I think I had $100 when I left school, I believe part of my railroad expenses came out of that, I am not sure about that.

Q. Well was that $100 or what was left used?

A. Well it was used, I don't—that all was used for the family because the things that I needed came out of it.

Q. Well was $10 or $25 or $50 used for the maintenance of the family?

A. I should say at least $50 was used for the family.

Q. I will ask you whether or not that contribution was necessary?

A. Yes, it was.

Q. After you left there in 1896 where did you go?

A. I went to Mrs. Foster's in Virginia.

Q. Did you engage in any occupation?

A. I taught for her.

Q. Since that time have you ever lived with your father or under his support?

A. No, I have not.

Q. State whether or not you have maintained yourself from that time on with or without any aid from him?

A. I have had no aid from him whatever, I have taken care of myself.

Q. After you left Vernon in 1896 did Ashby or Lunette ever attend a pay school to your knowledge?

A. Yes, they were at Georgetown university, I believe sometimes called the Southwest university.

Q. How long was Ashby there?

A. One year.

Q. How long was Lunette there?

A. One year.

Q. Do you know what the tuition was there?

A. No, I do not; I did *not* know, but I have forgotten.

Q. Did you make any contribution to the tuition of either of them?

A. Yes. I paid $110 on Ashby's tuition.

Q. Did you make any contribution to Lunette?

A. No.

Q. Did you ever go back to Texas after leaving there in the fall of 1896?

A. No.

Q. Have you since then lived in the same place or communicated with either your sister or your brother?

A. No.

Q. So that you have no knowledge as to the mode of living of either of them after that?

A. No.

Q. You have been providing your own clothing since when?

A. Since September 1894.

Q. That is for the past nine years?

A. Yes.

Q. In that time have you gained such a knowledge of the cost of clothing as to be able to make an estimate of the cost of the clothing of the children during the time that you had them under observation?

A. Yes, I think I have, I know what I have spent on my own clothes.

Q. Judging from your own expenses, and your observation of how they were dressed what in your opinion would it have cost to clothe them as they were clothed during the period which you have covered by your testimony, how much a piece per annum?

A. Well that is very hard to give because most of my sister's clothes were made out of mine and really she had very little.

Q. Give us the best estimate you can as to what she did have?

A. I am sure she has never had as much as $5 a month at any time.

Q. How is it with respect to Ashby?

A. Ashby has been taking care of himself for some years, when he was not I really think that $6 would probably cover all the expenses of both of them. Of course I can not say that positively because I do not absolutely know, but judging from — I saw.

Q. I wish you would tell me how the table was supplied during that fifteen months that you were at Vernon?

A. Well we had a garden and then things from the farm.

Q. What sort of things?

A. Our wheat which gave us our flour and we had plenty of butter, milk and eggs and chickens.

Q. Did you use game to any extent?

A. Well occasionally.

Q. How did you get that?

A. Ashby would frequently go out, he was very fond of hunting and the men on the place, whenever they got anything they sent it to us, our expenses were very little during that time.

Q. Your game was the product of hunting not purchased?

A. It was not purchased.

By Mr. NATHANIEL WILSON:

Q. Your uncle Silas Turner died in 1888?

A. I think that was the year.

Q. At that time the family was living in Louisiana?

A. Yes.

Q. And consisted of whom?

A. My father my mother and five children.

Q. State the names.

Q. Erle, Ashby, Lunette, Eva and myself.

Q. Do you remember your aunt coming from Virginia with your father on his return?

A. Yes.

Q. How long did she live there?

A. I think it was December of that year.

Q. Your father up to that time had been in the clerk's office?

A. I think so, he had some position in the court house.

Q. He gave that up on his return from Washington, he resigned that office?

A. I do not know, we left there.

Q. I understood you to say that you remained at Minden until August 1889?

A. Yes. He left in June.

Q. I was speaking of the family?

A. We remained there until August 1889.

Q. During that time the family consisted of the persons you have named except your father who went away in June?

A. We were with my aunt and cousin.

Q. What was your age at that time?

A. I was thirteen years old in October 1888, I think.

Q. Any one else except the persons you have named been with the family?

A. No.

Q. Who kept the house during that time?

A. My mother.

Q. Did you keep servants?

A. Part of the time we had a servant and part of the time we did not.

Q. In Minden?

A. Yes.

Q. Did the children go to school?

A. I went to school but I don't know about Ashby, possibly he went for a few months.

Q. Did you go to a public school?

A. To a private school.

Q. Whatever money needed in the family for family purpose was paid out by your father or your mother, who kept the purse, in other words?

A. Why, I don't know, they both had money, I usually went to my father when I needed anything.

Q. Then the family left Minden and travelled to Ennis county in December, 1889?

A. Yes. We went there in August.

Q. Were at Ennis from August to December?

A. Yes.

Q. How long a journey is Minden from Ennis, a day or two days?

A. I don't think it is more than a day. Ennis is very near Dallas.

Q. Did your father go with you?

A. Yes.

Q. All the family consisting of the persons named left Minden permanently and went to Ennis and stayed there from August 1889 to December 1889?

A. Yes.

Q. What was your father doing there?

A. My father left us and went to Vernon.

Q. Left you there.

A. Yes.

Q. All the children and your mother remained there from August to December?

A. All except Erle, I think he went with my father.

Q. Did you say you were keeping house during that time?

A. We were with a cousin.

Q. To whom they paid board?

A. I don't really know.

Q. Then you left there and went to Vernon?

A. Yes.

Q. Was the family all there?

A. Yes.

Q. When you got to Vernon, please state how the family was established, how it was situated in reference to its lodging, its daily life?

A. Our house was not quite finished when we got there.

Q. The house had been built by your father?

A. Yes.

Q. And until completed where did you go?

A. They were still working on it when we got there, but we went into it.

Q. You continued to reside in that house how long?

A. Until June 1890.

Q. As long as you remained there?

A. Yes.

Q. The house was completed?

A. Yes.

Q. And who was chiefly in charge of the house during that time?

A. My mother.

Q. So far as you know where did the means come from for the support of the family during that time?

A. I personally knew nothing about that, but we had boarders part of the time.

Q. I am speaking now of the money so far as you knew?

A. I presume from my father.

Q. During that time you had occasion for the use of money more or less did you not?

A. Well I had very little money that I spent.

Q. Whatever money you had and used from whom did you obtain it?

A. I really don't know whether my mother or my father gave it to me.

Q. Did you know of your father having any money or a bank account during that time?

A. Yes, because he gave me a check Christmas for a Christmas present, it was the first check I ever had, so I remember that.

Q. How much was it for?

A. $10 that was my Christmas present from him?

Q. What year was that?

A. 1889.

Q. What bank was the check on?

A. I don't remember, that is really the only money I remember having myself while I was there.

Q. This was before you left home at all?

A. Yes.

Q. From the time that the family arrived there until December when the family went to Virginia who were at home all of the children?

A. I think Erle stayed on the farm while we were out there.

Q. From the garden and from the farm you derived your supplies except such groceries as it was necessary to buy and dry goods?

A. The first time we were of course there was not very much that we could get from the garden or from the farm from December to June because it was too early in the season.

Q. Then you had nothing from the garden.

A. Not much, of course a few vegetables.

Q. You left Texas to go to Virginia at what time?

A. About June.

Q. Of what year?

A. 1890.

Q. Who paid the travelling expenses of the family and the living expenses from that time until the return of the family from Virginia to Texas, if you know?

A. I don't know, I always wrote to my mother for whatever I wanted after we came to Virginia, while I was at school I know for part of the time she was helping about the expenses of the family.

Q. In what way?

A. Some young lady who wanted her to have a mil-inary place in West Virginia, she offered to go into this and do the work and divided the profits from it.

Q. Your mother?

A. No, this young lady.

Q. Do you know what money she contributed to you or the amount received in that way?

A. No, I really do not.

Q. Who paid the bills of your tuition?

A. I think my father at Hollins, I don't know about the other bills.

Q. I understood you to say you have received no money whatever from your father since September 1896?

A. Since September 1894 when I began teaching.

Q. Since you began to teach in Kleinberg in 1894 you received nothing?

A. Except when I came to Virginia in 1894 I had $50 for my expenses, but I had the year before used what money I had made in the expenses at home.

Q. Who did you receive this $50 from?

A. My father.

Q. That is all the money you have received?

A. Yes.

Q. Have you made application since that time for money?

A. No.

Q. You never asked him to contribute to your expenses?

A. No.

Q. Where is your father now?

A. In California.

Q. Where?

A. Santa Anna.

Q. Who is there with him?

A. My mother, Lunette, Ashby is there part of the time.

Q. That is *is* post office address?

A. Yes.

Q. What county?

A. I think it is Orange county.

Q. In town or in the country?

A. In town.

Q. What is he engaged in?

A. I do not know.

Q. Do you hear from them constantly?

A. Yes.

Q. How long have they been there?

A. I think they went out there in 1901.

Q. Where did you last see your father?

A. In Washington.

Q. When?

A. That was in the spring of 1901.

Q. When he was examined here as a witness in this case?

A. Yes.

Q. When did you last see your mother?

A. When I left Texas in 1895.

Q. You don't know whether your father has any occupation?

A. No.

Q. Has Ashby any occupation?

A. I don't know, he has been travelling for some house but I don't know whether he is doing anything now or not.

Q. Is Lunette at home?

A. Yes.

Q. She has been constantly with your parents?

A. Except the year she was at school.

Q. Ashby has made his home with them constantly except occasional absences for business purposes?

A. Yes, he has been away from home since they have been in California a good deal.

Q. Where is Erle?

A. In Philadelphia when I last heard from him.

Q. When was that?

A. I have not had a letter from him this summer.

Defendants' Exceptions, &c.

Filed March 17, 1904.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL., Complainants,
vs. } Equity. No. 20552.
J. J. DARLINGTON ET AL., Defendants.

The defendants except to the report of the auditor filed in the above-entitled cause on the 9th day of March, 1904, and to so much and such parts thereof as are hereinafter set out and specified.

1. They except to the finding of the auditor that the estate of Philip A. Tracy was primarily liable to the complainants in the sum $26,981.35.

2. They except to the finding of the auditor that the liability of the estate of Philip A. Tracy to the complainants is to be determined according to the list of notes, Exhibit E. H. Turner No. 22.

3. They except to the refusal of the auditor to find that the liability, if any, of the estate of Philip A. Tracy to the complainants is to be determined by the receipt given by Thomas Turner to Philip A. Tracy, dated the 30th day of November 1888, being marked Exhibit T. M. T. No. 22.

4. They except to the refusal of the auditor to find that the estate of Philip A. Tracy if liable in any amount to the complainants, is liable only in the sum of $27,249.04, according to the receipt given by Thomas Turner to Philip A. Tracy, the same being Exhibit T. M. T. No. 2.

5. They except to the finding of the auditor that the burden of

proof is upon the defendants to show that the primary liability of the estate of Philip A. Tracey to the complainants should not be determined by the list, Exhibit E. H. T. No. 22.

6. They except to the refusal of the auditor to find that the burden of proof is on the complainants to show that the liability of Philip A. Tracey to the complainants is to be determined by the list of notes, Exhibit E. H. T. No. 22.

7. They except to the finding of the auditor that Philip A. Tracey's estate is to be charged with the sum of $28,972.10 less $1,800 invested in real estate and with the $439.25 interest collected and with $3,069.65 realized from said real estate investments.

8. They except to the finding of the auditor that Tracey's estate is chargeable with interest from the 30th of November, 1888, to the date of his accounting on said amount for which the auditor found said estate was primarily liable.

9. They except to the refusal of the auditor to find that the estate of Philip A. Tracey is not chargeable with interest on the moneys paid by Philip A. Tracey to Thomas M. Turner on the 30th day of November, 1888.

10. They except to the finding of the auditor that the estate of Philip A. Tracey should not be allowed credit for the payment made by Thomas M. Turner to Erle H. Turner on the 10th day of April, 1891, amounting to $1,200.

11. They except to the refusal of the auditor to credit the estate of Philip A. Tracey with said sum of $1,200 paid by Thomas M. Turner to Erle H. Turner on the 10th day of April, 1891.

12. They except to the finding of the auditor that the estate of Philip A. Tracey was not entitled to credit to the amount equal to the value of the interest of Philip A. Tracey in square 649, assigned by Philip A. Tracey to Erle H. Turner, said assignment being Exhibit E. H. T. No. 13, and the value of said square being $18,000 according to the stipulation of counsel (Record, page 357).

13. They except to the finding of the auditor that the estate of Philip A. Tracey was not entitled to credit at the rate of $20 per month for the moneys expended by Thomas M. Turner for the maintenance, support and education of Wilmer Turner from November 1888 to June 1890.

14. They except to the refusal of the auditor to find that the estate of Philip A. Tracey is entitled to credit for moneys expended by Thomas M. Turner for the maintenance, support and education of Wilmer Turner from November, 1888, to June, 1890, at the rate of $20 per month, amounting to $360.

NATH'L WILSON AND
CLARENCE R. WILSON,
Solicitors for Defendants.

Stipulation.

Filed June 8, 1904.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL.
vs.
JOSEPH J. DARLINGTON ET AL. } No. 20522. In Equity.

It is hereby stipulated and agreed by and between counsel for complainants and defendants that the executors of Philip A. Tracy have presented to and had passed by this court holding a special term as a probate court their second account as such executors and that the said defendants have in their hands belonging to the estate of their testator and subject, after deducting any further costs, allowances and credits in administration, to the payment of any final decree in behalf of the complainants in this cause, assets consisting of money and securities amounting to the sum of forty seven thousand dollars, and also the following described real estate to wit: Lots numbered one (1) and seven (7) in square numbered six hundred and forty nine (649) in the city of Washington, District of Columbia.

It is further stipulated and agreed that all just debts and claims presented or proven to the said executors against the estate of said Philip A. Tracy, except the claims of the said complainants, have been paid and satisfied, including all legacies bequeathed by the said testator except the following: One thousand dollars ($1000.) to the Oak Hill cemetery; two thousand dollars ($2000.) to the trustees of Trinity Episcopal church, and the residuary bequest to the trustees of the Epiphany Church home, all other debts and legacies having been paid in full by said executors within one year of the death of the testator and before they had notice of the claim of complainants.

It is further agreed that the complainants assent to the payments so made by said executors of said debts and legacies before notice of complainants' claims and make no claim against the executors by reason of such payment.

The executors having received notice of the claim of complainants before erecting the monument provided for in the will have not erected the same nor entered into any contract with respect thereto.

W. G. JOHNSON,
Solicitors for Complainants.
NATH'L WILSON AND
CLARENCE R. WILSON,
Solicitors for Defendants.

Final Decree.

Filed June 9, 1904.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL.
vs.
JOSEPH J. DARLINGTON ET AL.
} No. 20522. In Equity.

This cause coming on regularly to be heard upon the report of the auditor and his statements of account filed herein on the 9th day of March, A. D. 1904, and the exceptions thereto of the defendants filed herein on the 16th of March, A. D. 1904, and upon the stipulation of counsel filed herein on the 8th day of June, A. D. 1904, and having been submitted to the court by counsel without argument, and the court having considered the same, it is by the court this 8" day of June, A. D. 1904, adjudged, ordered and decreed:

First. That the exceptions of the defendants to the auditor's report be and each and every of them are hereby overruled.

Second. That the said report of the auditor and the statements of account therewith be and the same are hereby in all things finally ratified and confirmed;

Third. That there is due from the defendants' testator to the several complainants, the following sums, that is to say: To Erle H. Turner the sum of twelve thousand and six dollars and eleven cents ($1206.11) with interest upon seven thousand five hundred and twelve dollars and seventy-five cents ($7512.75) part thereof, from February 1, 1904 until paid; to Wilmer Turner the sum of thirteen thousand two hundred and twenty-six dollars and eleven cents ($13226.11) with interest upon seven thousand five hundred and twelve dollars and seventy-five cents ($7512.75) part thereof, from February 1, 1904, until paid; to Ashby Turner the sum of eleven thousand nine hundred and sixty-three dollars and thirty-six cents ($11963.36) with interest upon seven thousand five hundred and twelve dollars and seventy-five cents ($7512.75) part thereof, from February 1, 1904, until paid; to Lunetta Turner the sum of eleven thousand four hundred and forty-five dollars and eighty-six cents ($11445.86) with interest on seven thousand five hundred and twelve dollars and seventy-five cents ($7512.75) part thereof from February 1, 1904, until paid.

Fourth. It appearing to the court from the stipulation filed herein that the defendants have personal assets of their testator in the sum of forty-seven thousand dollars ($47000.) and real estate of said testator consisting of lots numbered one (1) and seven (7) in square numbered six hundred and forty-nine (649) in the city of Washington, District of Columbia, applicable to the discharge of the claim of the complainants, it is further adjudged, ordered and decreed that from the said assets the defendants shall, after paying the costs in this cause to be taxed by the clerk and after deducting any further costs, allowances and credits in administration, pay over and distribute ratably to the complainants or their solicitor of record on account of the amounts hereinbefore adjudged to be due them with interest on the parts thereof as hereinbefore adjudged so far as said assets shall extend; and that the complainants be entitled to such further sum as the court shall hereafter assess on discovery of further assets in the hands of the defendants, and as may be necessary to satisfy the amounts severally adjudged to be due the complainants as aforesaid. And that complainants have execution as at law.

And from this decree the defendants in open court appeal to the Court of Appeals.

THOS. H. ANDERSON, *Justice.*

Motion to Dismiss Appeal.

Filed July 8, 1904.

In the Supreme Court of the District of Columbia.

Erle H. Turner et al.
vs.
Joseph J. Darlington and George W. Gray, Executors of Philip A. Tracy, Deceased.
} No. 20552. In Equity.

Come now Erle H. Turner, Wilmer Turner, Ashby Turner and Lunette Turner, by their counsel and solicitor, William G. Johnson, and make application to the court to dismiss the appeal, noted in open court on the eighth day of June, 1904, from the decree in this cause passed on said eighth day of June, 1904, under the provisions of rule ten of the Court of Appeals of the District of Columbia, and for cause show:

That the said decree was entered on the eighth day of June, A. D. 1904, and an appeal therefrom noted in open court on said eighth day of June, A. D. 1904. That no bond to supersede said decree, as required by section two of said rule ten of said Court of Appeals has been approved by this court or filed in the clerk's office of this court, as appears by the record herein; that no bond or deposit to cover costs on appeal from said decree has been filed or made as required by section three of said rule ten of said Court of Appeals, which also appears by the record in this cause; that the transcript of the record on said appeal has not been transmitted to the said Court of Appeals, and that by the provisions of section four of said rule ten of said Court of Appeals this court is authorized to dismiss the said appeal under the conditions hereinbefore set forth.

ERLE H. TURNER,
WILMER TURNER,
ASHBY TURNER,
LUNETTE TURNER,
By W. G. JOHNSON,
Their Counsel and Solicitor.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the foregoing application for the dismissal of the appeal from the decree entered on the eighth day of June, 1904 in the above entitled cause; that the facts therein stated are true and are known to me to be true.

W. G. JOHNSON.

Subscribed and sworn to before me this 8th day of July, A. D. 1904.

OSCAR LUCKETT,
Notary Public, D. C.

Order Dismissing Appeal.

Filed July 8, 1904.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL. *vs.* J. J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased.	No. 20552. In Equity.

Upon consideration of the application of the appellees Erle H. Turner, Wilmer Turner, Ashby Turner and Lunette Turner, by their counsel and solicitor this day filed herein, it is by the court this 8th day of July, 1904, ordered that the said appeal from the decree passed herein on the eighth day of June, A. D. 1904, be and the same hereby is dismissed.

ASHLEY M. GOULD, *Justice.*

Motion and Affidavit, &c.

Filed July 11, 1904.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

ERLE H. TURNER ET AL., Complainants, *vs.* JOSEPH J. DARLINGTON and GEORGE W. Gray, Defendants.	In Equity. No. 20552.

Now come the solicitors for the defendants and move the court to set aside the order entered herein on the 8th day of July, 1904, from the decree made herein on the 8th day of June, 1904, because of want of notice of the making of the application referred to in said order and for the reasons appearing in the affidavits of Nathaniel Wilson filed herein, and for permission to file a supersedeas bond, *nunc pro tunc*, and for suspension of execution of decree.

R. ROSS PERRY AND SON,
Attorneys for Petitioner.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

ERLE H. TURNER ET AL., Complainants, *vs.* JOSEPH J. DARLINGTON and GEORGE W. Gray, defendants.	In Equity. No. 20552.

Nathaniel Wilson being first duly sworn deposes and says, that he and his son, Clarence R. Wilson, are the solicitors of record for the defendants in the above-entitled cause; that on the tenth day of October, 1902, a decree was entered in said cause adjudicating that the defendants' testator, Philip A. Tracy, was the trustee for the complainants in respect of all the property and estate of Silas H. Turner named in the bill of complaint, being or coming into the hands of said Tracy at and after the death of the said Silas H. Turner, and that complainants were entitled to an accounting of and concerning the moneys and properties received by said Tracy from said Turner, and referring the cause to the auditor to state such account, a copy of said decree being filed herewith and made a part hereof marked "A."

That an appeal was taken from said decree to the Court of Appeals of the District of Columbia, and a supersedeas bond was given which was approved by consent, and at the same time a stipulation was made and entered into between the solicitors for the complainants and the defendants in respect of the record of said cause and what should constitute the same, a copy of said bond and of said stipulation being filed herewith and made a part hereof marked "B and C."

That thereafter, to wit, on the 16th day of December, 1902, the record of said cause was duly filed in the Court of Appeals of the District of Columbia, the cause being No. 1266 on the docket of said court.

That since the filing of said record said cause has been continued from term to term on the joint request of the counsel of record for complainants and defendants, under and according to and — carry out the purpose of said stipulation, and said cause is now on the calendar of said Court of Appeals for hearing at the October term of said court, and is one of the first causes for hearing at the October term, 1904.

That in view of the fact that the defendants had filed a supersedeas bond, as aforesaid, for the small penalty with the consent of the solicitor for the complainants, and in view of the further fact, well known to said solicitor, that all the moneys and securities in the hands of the defendants were and are held subject to the decree of the court in said cause, and in view of the facts that the solicitors for the defendants had heartily co-operated with the solicitors for the complainants to obtain the speedy, complete and final determination of the issues raised by said bill and answer, the solicitors for the defendants well supposed that the giving of a bond, in respect of the appeal taken from the decree on the 8th. day of June, 1904, if not wholly unnecessary in view of the situation of the case in the Court of Appeals, was yet a matter of form, of no real importance; that the failure of the solicitors of the defendants to file a bond, as apparently required by the rules of the Court of Appeals, was occasioned by the accidental mislaying of the bond that had been prepared and signed by one of the appellants and by the inability to obtain the signature of the other appellants until after the dirst day of July, 1904, the day on which the time for the filing of a bond expired under the rules of the Court of Appeals.

NATH'L WILSON.

Subscribed and sworn to before me this ninth day of July, A. D 1904.

HERBERT L. FRANC.
[SEAL.] *Notary Public for the District of Columbia.*

"EXHIBIT A."

Filed October 10, 1902.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL.
vs.
J. J. DARLINGTON ET AL.
In Equity. No. 20552.

This cause came on regularly to be heard upon the pleadings and evidence, and having been argued by counsel for complainants and defendants and submitted to and considered by the court, it is by the court, this tenth day of October, A. D. 1902, adjudged, ordered and decreed:

First. That the defendants' testator Philip A. Tracy was trustee for the complainants in respect of all the property and estate of Silas H. Turner, being or coming into the hands of said Tracy at and after the death of the said Silas H. Turner.

Second. That the complainants are entitled to an accounting from the defendants as executors of the said Philip A Tracy of and concerning the moneys and properties received by said Tracy from said Silas H. Turner.

Third. That this cause be and the same is hereby referred to the auditor of this court to state such account, and that on such accounting the defendants shall be entitled to credit for the sums which it appears from the evidence were paid at various times by the said Tracy in his lifetime to Erle H. Turner, one of the complainants, after said Erle H. Turner had attained his majority.

Fourth. That for the purpose of stating the account herein directed to be stated and of ascertaining what credits the defendants may be entitled to the auditor is to consider all the testimony in the case bearing on that subject and is authorized to take further testimony as the parties to this cause may desire, as to the correctness of the allegation of the defendants that the money received by Thomas M. Turner from said Tracy was expended for the benefits of the complainants or any of them, that the expenditures were reasonable for the complainants under the circumstances, and that the said Thomas M. Turner was unable to support the complainants, his children from his own means.

Fifth. Upon the completion of said hearing before the auditor the said auditor shall report to this court the said statement of account and his proceedings under this reference for the final decree of this court thereon.

A. B. HAGNER,
Assoc. Justice.

EXHIBIT "B."

In the Supreme Court of the District of Columbia.

ERLE H. TURNER, WILMER TURNER, ASHLEY Turner, and Lunette Turner, by Wilmer Turner, Next Friend, Complainants,
vs.
JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased.
No. 20552. In Equity.

Know all men by these presents, that we, Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, as principals, and —— ——, as suret-, are held and firmly bound unto the above named Erle H. Turner, Wilmer Turner, Ashley Turner and Lunette Turner in the full sum of two hundred and fifty dollars to be paid to the said Erle H. Turner, Wilmer Turner, Ashley Turner and Lunette Turner, their executors, administrators, successors, or assigns. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, administrators, successors, and assigns, firmly by these presents.

Sealed with our seals, and dated this 30th day of October, in the year of our Lord one thousand nine hundred and two.

Whereas the above-named Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased have prosecuted an *an* appeal to the Court of Appeals of the District of Columbia, to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia; rendered on the tenth day of October, 1902.

Now, therefore, the condition of this obligation is such, that if the above-named Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JOSEPH J. DARLINGTON, [SEAL.]
GEORGE W. GRAY, [SEAL.]
As Executors of Philip A. Tracy, Deceased.

Sealed and delivered in presence of—
—— ——.

A true copy.
Test:
J. R. YOUNG, *Clerk,* [SEAL.]
By R. J. MEIGS, JR.,
Ass't Clerk.

This bond is satisfactory without surety.

W. G. JOHNSON,
Sol'r for Compl'ts.

Approved the 30th. day of October, 1902.

A. B. HAGNER,
Justice S. C. D. C.

EXHIBIT "C."

Filed October 29, 1902. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

ERLE H. TURNER ET ALS., Complainants,
vs.
JOSEPH J. DARLINGTON and GEORGE W. Gray, Defendants.
In Equity. No. 20552.

It is hereby stipulated and agreed that the appeal taken to the Court of Appeals of the District of Columbia by the defendants in the above-entitled cause from the decree entered on the 10th day of October, 1902, by the supreme court of the District of Columbia, sitting in equity, shall not be heard in said Court of Appeals until the appeal that shall be taken from the decree to be entered upon the coming in of the auditor's report on the reference made to the auditor in and by the aforesaid decree shall be heard; also that the transcript of the record on said first appeal and the transcript of the record of the proceedings since said appeal shall together constitute the record on said last appeal; and further that request shall be made to said Court of Appeals to pass such order as may be necessary to carry into effect this agreement, and to secure the hearing by said court upon a complete record of the appeal from said decree of October 10th, 1902, and from the decree that shall be entered upon and in respect of the auditor's report by the said supreme court of the District of Columbia.

W. *E*. JOHNSON,
Sol'r for Compl'ts.

October 29, 1902.

NATH'L WILSON,
CLARENCE R. WILSON,
Sol'rs for Def'ts.

[SEAL.]

Affidavit of Wm. G. Johnson.

Filed July 13, 1904.

In the Supreme Court of the District of Columbia.

ERLE H. TURNER ET AL.
vs.
JOSEPH J. DARLINGTON ET AL. } No. 20552. In Equity.

DISTRICT OF COLUMBIA, *ss:*

William G. Johnson being duly sworn says:

That he is the solicitor for the complainants in the above entitled cause. That it is true that he gave no notice of the application to this court to dismiss the appeal herein because he considered that the defendants were not entitled to notice under the law, the application being, as this affiant understands it, one grantable *ex parte* and of course, the matters necessary to the granting of the application being facts of record in the cause itself, and that the rule of court in terms contemplates an *ex parte* application, and not a formal motion, upon notice, to be contested by the adverse party.

Affiant further says that it is true that on the 10th day of October, 1902, a decree was entered in this cause in form as set forth in Exhibit A, with the affidavit of Nathaniel Wilson, Esquire, and that an appeal therefrom was taken to the Court of Appeals. This affiant does not consider that circumstance as having any bearing upon the present application, but it having been brought to the attention of the court by the affidavit of the solicitor for the defendants, this affiant deems it proper to state the facts with respect to such appeal other than as they appear in the record, which facts are:

That the defendants' solicitor, Nathaniel Wilson, Esquire, discussed the effect of the decree of October 10, 1902, with this affiant, and this affiant then expressed the opinion that the decree was not appealable because it was not a final decree although it settled the law of the case for further proceedings. Mr. Wilson expressed himself as unwilling to take the risk of losing his opportunity to reverse such a decree on appeal should it ultimately be held to be a final decree, and this affiant then suggested to Mr. Wilson that if he feared the loss of any rights he might take an appeal from said decree to the Court of Appeals and let it lie there until the reference to the auditor provided for in the said decree was completed and the final decree thereon entered from which an appeal might be taken, and this affiant would then consent to having the two appeals consolidated and the cause heard upon the one record. Without acting upon this suggestion of affiant the defendants' solicitor applied to the Court of Appeals under the provisions of the statute in such case for the allowance of a special appeal, which application was denied by the Court of Appeals. Thereupon in pursuance of the previous suggestion of affiant the defendants' solicitor took his appeal to the Court of Appeals from said decree of October 10, 1902, and the stipulation made Exhibit C with Mr. Wilson's affidavit was entered into.

This affiant always claimed the said decree of October 10, 1902, was not appealable and considered that it could be dismissed by this affiant on motion for want of jurisdiction in the Court of Appeals, but adopted the course referred to merely because of the expressed apprehension of the defendants' solicitor that he might lose the right to assail said decree in the Court of Appeals if an appeal were not taken from it at the time and because it was the opinion of this affiant that upon an appeal from the final decree the decree of October 10, 1902, or any other interlocutory order might be assigned for error and reversed if erroneous.

Affiant further states that in the opinion of this affiant defendants' solicitor is mistaken in supposing that the bond given on said appeal was a supersedeas bond. That the only act authorized by the said decree of October 10, 1902, which could be the subject of a supersedeas was the reference to the auditor to state accounts and the other proceedings before him therein directed, which, by the stipulation above referred to, were expressly authorized to be carried on and were in fact carried on to completion as provided in the said decree of October 10, 1902.

Affiant further states that after the time for perfecting the appeal from the decree of June 8th, 1904, had elapsed without any act done looking to its perfection he considered and still considers that the rights of his clients became fixed in the said decree as an absolute decree and that he had no right to assent to any act which would impair its finality as an absolute decree, or himself to omit doing anything which upon his part was necessary to be done for the protection of the rights of his clients, and that it was in pursuit of that duty that he applied for the dismissal of the appeal from said decree of June 8th, 1904.

Affiant further states that as shown by the record in this cause the assets of the estate are insufficient to satisfy the amount decreed to be due to the complainants, and that that deficiency will increase with time, and may, by reason of possible depreciation in value of some of the assets very greatly increase; that unless the costs and expenses of prosecuting the appeal are borne by the executors *de bonis propriis* instead of *de bonis testatoris* the amount of the recovery by affiant's clients will be still further diminished, even though the decree in their behalf shall be affirmed.

That the subject of the bond to be given on appeal from the final decree in this cause was never mentioned to this affiant by the defendants' solicitors and it was the purpose of this affiant when application should be made for giving such a bond as a supersedeas to insist upon a bond sufficient in amount to save the complainants from all loss which might result by reason of the delay and costs of prosecuting the appeal. And this affiant never regarded the matter of the appeal bond as a formal one but on the contrary regarded it as a very substantial right which it would be his duty to insist should be full and sufficient in every particular.

This affiant has no personal knowledge as to the bond which was prepared and signed by one of the defendants nor any personal knowledge of the circumstance of the failure to give the bond within the time required by the rules of the court. But this affiant was not informed of the fact of the execution of said bond by one of the defendants, or of the amount thereof or of the surety proposed and does not now know whether said bond if it had been tendered would have been sufficient and such as this affiant would have had the right to accept. Affiant understood from defendants' solicitor, after the time for giving the bond had expired, that the bond proposed to be given was not a supersedeas bond but only a bond for costs.

W. G. JOHNSON.

Subscribed and sworn to before me this twelfth day of July, 1904.

OSCAR LUCKETT,
Notary Public, D. C.

[SEAL.]

Order Vacating Order Dismissing Appeal.

Filed July 14, 1904.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

ERLE H. TURNER ET AL., Complainants, *vs.* JOSEPH J. DARLINGTON ET AL., Defendants.	In Equity. No. 20552.

On considering the motion filed by the solicitors for the defendants in the above entitled cause, on the 11th day of July, 1904, to vacate the order entered herein on the 8th day of July, 1904, dismissing the appeal from the decree entered in the above-entitled cause on the 8th day of June, 1904, and counsel for both sides having been heard, counsel for complainants objecting thereto, it is this 14th day of July, 1904, *ordered* that the said order entered on the 8th day of July 1904, dismissing the appeal to the Court of Appeals taken by the defendants in the above-entitled cause, from the decree entered by this court on the 8th day of June, 1904, be and the same is hereby vacated and set aside. And it is further ordered that the appellants be and they hereby are allowed forty days from this 14th day of July, 1904, within which to file a transcript of record in the Court of Appeals; further that the application of the appellant for leave to file *nunc pro tunc a supersedeas* bond is hereby over-ruled and denied, the court being of the opinion that it has no power to allow said bond after the expiration of the period of twenty days prescribed by the rule of the Court of Appeals in the premises; the court declining to pass upon the sufficiency of the supersedeas bond filed herein on the 29th day of October, 1902, considering that a question to be determined by the Court of Appeals and for that purpose permitting the prosecution of this appeal.

ASHLEY M. GOULD, *Justice.*

Appeal.

Filed August 1, 1904.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

Erle H. Turner et al., Complainants,
vs.
Joseph J. Darlington et al., Defendants.
} In Equity. No. 20552.

Now come the defendants and note an appeal to the Court of Appeals from the order entered in the above-entitled cause on the 14th day of July, 1904, vacating the order entered on the 8th day of July, 1904, and denying leave to defendants to file a supersedeas bond, *nunc pro tunc.*

NATH'L WILSON,
CLARENCE R. WILSON,
Solicitors for the Defendants.

Order for Citation.

Filed August 1, 1904.

In the Supreme Court of the District of Columbia, the 1st Day of August, 1904.

Turner et al.
vs.
Darlington et al.
} Equity. No. 20552.

The clerk of said court will issue citation on appeal to appellees (complainants) or their counsel of record (Wm. G. Johnson).

NATH'L WILSON &
CLARENCE R. WILSON,
Attorney- for Def'd'ts.

In the Supreme Court of the District of Columbia.

ERLE TURNER, WILMER TURNER, ASHBY Turner, Lunette Turner, by, &c.,
vs.
JOSEPH J. DARLINGTON, GEORGE W. GRAY, Executors of P. A. Tracy.
No. 20552. In Equity.

The President of the United States to Erle Turner, Wilmer Turner, Ashby Turner, Lunette Turner, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant to an appeal prosecuted by defendants, from the supreme court of the District of Columbia, on the 1st day of August, 1904, wherein said defendants are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 2d day of August, in the year of our Lord one thousand nine hundred and four.

JOHN R. YOUNG, *Clerk*,
By R. J. MEIGS, JR.

Service of the above citation accepted this 3d day of August, 1904.
W. G. JOHNSON,
Attorney for Appellees.

[Endorsed:] No. 20552 Law. Equity. Erle Turner etc. *vs.* J. J. Darlington etc. Citation. Issued Aug. 2, 1904. Service accepted by Wm. G. Johnson as within Aug. 3, 1904 Aulick Palmer, marshal. B. —— ——, attorney for appellants.

Memorandum.

August 4, 1904.—Appeal bond filed.

Order to Make up Record.

Filed July 7, 1904.

In the Supreme Court of the District of Columbia.

TURNER ET AL.
vs.
DARLINGTON ET AL. } No. 20552. In Equity.

To the clerk of the supreme court of the District of Columbia:

An appeal having been taken in the above-entitled cause to the Court of Appeals from the decree entered on the 8th day of June, 1904, the clerk will please prepare the record for transmission to the Court of Appeals, which record is to consist of the following papers:

Petition of executors and affidavit therewith filed February 19, 1904.
Order of court on said petition filed February 19, 1904.
Auditor's report with accompanying testimony filed March 9, 1904.
Exceptions to auditor's report filed March 17, 1904.
Stipulation of counsel filed June 8, 1904.
Final decree filed June 8, 1904.
Motion to dismiss appeal.
Order of court thereon.
Motion to vacate order dismissing appeal, with exhibits.
Affidavit of Wm. G. Johnson in opposition thereto.
Order of court thereon vacating order.
Appeal to Court of Appeals.
Note of bond filed.
Citation on appeal.

NATH'L WILSON,
Sol'r for Defendants.
CLARENCE R. WILSON,
Sol'r for Defendants.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } *ss:*
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 72, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 20,552, in equity, wherein Erle H. Turner *et al.* are complainants, and Joseph J. Darlington *et al.*, executors of Philip A. Tracy, deceased, are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 24th day of August, A. D. 1904.

J. R. YOUNG, *Clerk*,
By ALF. G. BUHRMAN, ***Ass't Cl'k.***

Endorsed on cover: District of Columbia supreme court. No. 1460. Joseph J. Darlington *et al.*, executors, appellants, *vs.* Erle H. Turner *et al.* Court of Appeals, District of Columbia. Filed Aug. 24, 1904. Henry W. Hodges, clerk.

THURSDAY, *October* 20*th*, *A. D.*, 1904.

JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased, Appellants,
vs.
ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Their Next Friend.
No. 1460.

The motion to dismiss the appeal in the above entitled cause was submitted to the consideration of the court by Mr. W. G. Johnson, in support of motion, and by Messrs. R. Ross Perry and George E. Hamilton, in opposition thereto.

FRIDAY, *October* 21*st*, *A. D.*, 1904.

JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip Tracy, Deceased, Appellants,
vs.
ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Their Next Friend.
No. 1460.

On consideration of the appellees' motion to dismiss the appeal in the above entitled cause, it is by the court now here ordered that said motion be, and the same is hereby, postponed until the hearing of the case on its merits.

TUESDAY, *January 17th, A. D.*, 1905.

JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased, Appellants, *vs.* ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Next Friend.	No. 1266.

and

JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased, Appellants, *vs.* ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Their Next Friend.	No. 1460.

The argument in the above entitled cause was commenced by Mr. Nathaniel Wilson, attorney for the appellants, and was continued by Mr. W. G. Johnson, attorney for the appellees.

WEDNESDAY, *January 18th, A. D.*, 1905.

JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased, Appellants, *vs.* ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Next Friend.	No. 1266.

and

JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased, Appellants, *vs.* ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Their Next Friend.	No. 1460.

The argument in the above entitled cause was continued by Mr. W. G. Johnson, attorney for the appellees, and was concluded by Mr. Clarence R. Wilson, attorney for the appellants.

JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased, Appellants, *vs.* ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Next Friend.	No. 1266.

and

JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased, Appellants, *vs.* ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Their Next Friend.	No. 1460.

Opinion:

(Mr. Chief Justice SHEPARD delivered the opinion of the court:)

This is a suit to recover a trust fund. The bill was filed in the supreme court of the District of Columbia, on June 10, 1899, by Erle H. Turner, Wilmer Turner, and by Lunette Turner and Ashby Turner, by Wilmer Turner, as next friend, against Joseph J. Darlington and George W. Gray, as executors of Philip A. Tracy, deceased.

The bill alleges, that complainants are the children of Thomas M. Turner and the nieces and nephews of one Silas H. Turner, deceased, late a resident of Warrenton, Virginia; that in April, 1888, and for many years prior thereto, Philip A. Tracy was the agent and trustee of said Silas H. Turner, and as such intrusted by him with large sums of money for investment amounting to about $29,000; that on April 30, 1888, Philip A. Tracy prepared and wrote a will for Silas H. Turner at the latter's request; that said will was duly executed by said Silas H. Turner, whose signature was attested by Philip A. Tracy and Geo. G. Fenton, and reads as follows: "I hereby give and bequeath to the four children of my brother Thomas M. Turner, of Minden, Louisiana, all property real and personal, owned by me or in which I have an interest at the time of my death, and appoint Philip A. Tracy to distribute the proceeds of said property equally between them;" that on said date Thomas M. Turner, the father of complainants, lived at Minden, Louisiana, where they also resided; that Erle H. Turner was then nineteen, Wilmer Turner, thirteen, Ashby Turner, nine, and Lunette Turner, six years old, respectively; that Silas H. Turner died in Fauquier County, Virginia, September 21, 1888, and his will aforesaid was, upon the testimony of said Tracy and Fenton, admitted to probate in said county on the 28th day of November, 1888; that the said will appointed no executor, and no administrator of the estate of said Silas H. Turner was ever appointed; that at the date of the execution of said will, and of said probate, and thereafter said Tracy was and continued to be in the possession of the entire estate of said Silas H. Turner, consisting of promissory notes of various persons secured by deeds of trust upon real estate in the District of Columbia, and of the interest in money accruing due thereon, amounting in the aggregate to about $30,000; that before the death of Silas H. Turner the said Tracy gave him a list of said notes showing dates and amounts and the names of the makers, which list set out in full shows notes representing a total of $28,972.10; that said notes were all paid and collected after the death of said Silas H. Turner, but complainants have no means of knowing what disposition was made of the proceeds, wherefore they are entitled to discovery by defendants; that after the death of said Silas H. Turner said Thomas M. Turner exhibited the aforesaid list of notes to said Tracy, who acknowledged its correctness and his possession of said notes, and declared them all "good as gold;" that said Tracy never distributed the proceeds of the property in his possession, or any part thereof, among complainants, as required by said will, save and except certain small sums, paid between 1890 and 1898, to Erle H. Turner, amounting to about $1,400; that said Tracy retained to the day of his death the remainder of said property, and all the said fund, principal, interest, and profits have come into the possession of the defendants as his executors; that during the interval between the death of Silas H. Turner and that of Philip A. Tracy the latter acknowledged the possession of said trust fund and his trusteeship thereof, but represented that the same was invested with funds of his own in land, and that owing to depreciation in values he was unable to collect either principal or income; that said Tracy died July 5, 1898, leaving a will in which the defendants were appointed executors, and that they have caused the same to be probated and have received letters testamentary. Other allegations of the bill state the distant residence of the complainants, their want of knowledge of the facts concerning the bequest in the will of Silas H. Turner, the amount and character of the trust fund, and certain conduct of Tracy tending to deceive them and prevent inquiry, knowledge, etc., by way of explanation of the delay of Erle and Wilmer Turner after arriving at age of maturity in bringing their suit. It is further alleged that no one of the complainants had ever had a guardian of their estates and persons, or any other person authorized by law to demand or receive the said property belonging to them under the terms of the will of Silas H. Turner.

The prayers are for the discovery of all papers and documents of said Tracy relating to the trust; that said Philip A. Tracy, deceased, be decreed to have been, from the death of Silas H. Turner to the time of his own death, a trustee of complainants as to the whole estate of Silas H. Turner and accountable for said trust funds, and that the defendants are accountable for the same since his death; that defendants make full discovery as to what proceeds were realized from any disposition of said notes, and as to what profits, if any, were realized by the investment of the money, and what disposition has been made of the same; that defendants be required to account for the amount of the notes described in the list before given, together with interest on the same and profits therefrom, from September 21, 1888; that defendants be decreed to pay over to complainants the total amount of said trust estate on a proper accounting, and that they have such other and further relief as the nature of their case may require, etc.

The answer admits that Tracy had relations with Silas H. Turner under which he held and invested funds of the latter, of a nature of which defendants have no knowledge, but denies that Tracy continued after the death of said Turner to retain possession of his estate. It avers on information and belief that Philip A. Tracy, after the death of Turner, properly accounted for and disposed of the funds, etc., in his hands, and at the time of his death, on July 5, 1898, did not have in his possession any notes or other securities of said Silas H. Turner's estate; that none have come into the hands of his executors since his death. The following paper written by said Tracy was set out in the answer as having come into the possession of defendants, and its production offered:

"WASHINGTON, D. C., ——, 1898.

"To the executors of my last will and testament:

"Some time in 1871, Silas H. Turner, of Virginia, whom I had known for a long time, of his own volition and without solicitation from me, came to the city and asked me to aid him in investing some twelve thousand dollars ($12,000) in real estate notes. I consented and in a few weeks the whole amount was invested, and he took the notes home with him. The interest was payable semi-annually, and, for a time, he sent me notes by mail about the time the interest was due so that it could be credited on the notes to satisfy the maker. This became irksome and, after a time, be brought me the notes, keeping a list of them, and asked me to keep them to save him the trouble of sending them to me by mail whenever the interest was *was* due. I kept the notes in an envelope with his name upon it, and about twice a year sent him a memorandum of interest paid, and when the amount reached several hundred dollars I would buy another note, and send him a memorandum of the same. Also when a note matured and was paid, I would buy another note, unless he needed the money, which he rarely did, and send him a memorandum of it. This condition continued until 1888, when he died in Virginia, leaving his entire estate to the three minor children of his brother then living in Louisiana. In his will he named me to settle up the estate and divide the money among the children; but, as the laws of Virginia require two witnesses to a will and says neither of them shall be an executor I could not qualify, and as the father if appointed could not have given the bond, I handed him the package of notes, advised him to deposit them in the Second National Bank of Washington, D. C., which he did, and agreed to look after them, and have them all paid, he being out of the city. His other relations, a sister—some nephews and nieces, were much displeased with the will, and threatened to attempt to have it set aside, but have not done so. The father—a good, honest man—took the money or most of it, went to Texas and bought a farm, and was doing well until the panic of 1893 came on. Since *the* then they had a hard time, getting little or nothing for their farm products, and have written me some heart-rending letters wishing they had left the money here. The children are of age but of course the father could not pay them their parts of the estate, and though not a word has been said about it, I thought perhaps after my death, if they hear of it in time, some of them might attempt to hold me responsible, and if they should make such an attempt, I hereby authorize and direct my executors to employ the best counsel in the city to defend my estate in the District courts and in the Supreme Court of the United States, if it be necessary to appeal the case to that court, and to pay all costs and lawyers' fees out of my estate. I suppose some one would have to qualify as administrators under the will before any action could be taken. My turning the property over to the father helped to keep it in the possession of those to whom it was left, and to discourage and shut out the dissatisfied relatives, for if any one had qualified the matter would have been open for a year, and they would undoubtedly have made an attempt to have the will set aside. This is a plain statement of the case intended for the private ears of my executors."

The answer further sets out a paper found by them among the papers of Philip A. Tracy, purporting to be a list of notes and a receipt for the same by Thomas M. Turner, as follows:

"Full list of notes and cash in the hands of Philip A. Tracy belonging to S. H. Turner, deceased, Nov. 30, '88:

Date of notes.		
March 22, '84.	Two notes of John B. Taylor for $1,000 each	$2,000 00
May 19, '86.	Two notes of Julius Rehwold, $300 each. .	600 00
May 19, '86.	Two notes of Julius Rehwold, $800 each. .	1,600 00
April 18, '87.	One note of Louisa A. Grant.	300 00
March 12, '86.	One note of Diller B. Groff.	1,500 00
March 12, '86.	One note of Diller B. Groff.	1,000 00
Dec. 15, '85.	Two notes of Eliza U. Lee, $600 each. . . .	1,200 00
June 13, '88.	One note of Roth & Moore.	325 00
Jan'y 19, '81.	One note of Edwin F. Jones.	1,000 00
Feb. 18, '88.	One note of Charles W. Baldwin.	2,500 00
Jan'y 27, 88.	Three notes of Alban H. Nixon, $450 each	1,350 00
July 12, '81.	Two notes of Flora V. Andrews, $500 each	1,000 00
Oct. 30, '86.	Three notes of John B. Avery, $200 each.	600 00
Oct. 22, '86.	Seventeen notes of Thos. H. Benton, $120 each	2,040 00
Aug. 25, '88.	One note of Frank W. Paige.	3,000 00
Oct. 17, '88.	Three notes of J. L. Burns, $462.50 each.	1,387 50
Nov. 6, '88.	One note of E. V. Jarvis.	200 00
Nov. 19, '88.	Two notes of C. S. McEwen ($600 each). .	1,200 00

	Two lots on Md. Ave. N. E.	1,800 00
Sep. 28,	Cash, T. M. T.	439 25
Nov. 30,	Cash, T. M. T., in full	337 64
	(In'st now due)	600 00
		$25,379 39

"Nov. 30, '88.—Received the above described notes and cash in full under the will of S. H. Turner, deceased.

T. M. TURNER,
Natural Tutor and Agent for My Minor Children.

(Notes all placed in Second National Bank by T. M. Turner) in pencil.

It is further averred that said Thomas M. Turner received the notes and money aforesaid and deposited them in the Second National Bank of Washington for collection, and that the entire proceeds were drawn by him and applied to the benefit of complainants; that Tracy, between September 6, 1894, and May 17, 1895, took receipts from Erle H. Turner for $1,435 in all, all of which are in the possession of the defendants; that Thomas M. Turner signed said receipt as "natural tutor and agent for my minor children," as appears therefrom; and that defendants do not know in what State he and his children had their domicile and residence at the time of the death of said Silas H. Turner, and are unable to say what were the lawful rights and powers of said Thomas M. Turner in the premises. The answer concluded with averments that complainants are not entitled to any relief by reason of their gross laches, and that they have shown no right to maintain their suit.

Replication was filed by the complainants and evidence was taken. As the foundation of their demand the complainants offered the list of notes set out in the bill as given by Tracy to Silas H. Turner, as follows:

S. H. Turner.

Nov. 18, '82.	(W. Z. Partello) paid	$0,000 00
Nov. 1, '79.	Susan W. McNamee	1,700 00
Jan. 19, '81.	Edwin F. Jones	1,000 00
April 7, '75.	J. H. Hollidge	800 00
March 22, '84.	John B. Taylor	1,000 00
March 22, '84.	John B. Taylor	1,000 00
July 12, '81.	Flora V. Andrews (2)	1,000 00
June 6, '85.	Jennie J. West	3,400 00
April 3, '85.	Caroline Isdell (2)	1,335 20
Dec. 15, '85.	Eliz. V. Lee	600 00
Dec. 15, '85.	Eliz. V. Lee	600 00
Jan. 8, '86.	Mary J. Lewis (3)	1,200 00
Dec. 30, '85.	John L. Carusi	1,350 00
May 19, '86.	Julius Rehwold (4)	2,200 00

Dec.	24, '85.	Rufus A. Morrison	1,500 00
Oct.	30, '86.	John B. Avery (4)	800 00
Oct.	2, '86.	Thomas R. Benton (15)	1,800 00
June	1, '86.	G. H. La Fetra	1,036 90
April	18, '87.	L. A. Grant	300 00
Aug.	20, '85.	D. B. Groff	1,500 00
		(Footing in lead pencil)	24,122 10

Second Sheet.

1888.	Am't for'd (in lead pencil)	24,122 10
Feb. 18.	C. W. Baldwin	2,500 00
Jan. 27.	A. H. Nixon (3)	1,350 00
Mar. 12.	D. B. Groff	1,000 00
		28,972 10

This paper was proved to have been written by Philip A. Tracy, and Thomas M. Turner testified that he showed the same to said Tracy, after the death of Silas H. Turner, who acknowledged its correctness, and said the notes were as " good as gold."

Proof was made showing that the complainants were the four children of Thomas M. Turner and the beneficiaries named in the will of Silas H. Turner; that they were of the ages charged in the bill at that time and were living at Minden, La., with their father and their mother, upon a small farm belonging to the latter; that Thomas M. Turner came to Fauquier county, Virginia, in September, 1888, and found Silas H. Turner approaching his death; that upon the decease of the latter he found the will described in the bill in testator's trunk, and also the list of notes aforesaid; that the said will was duly probated in a court of competent jurisdiction in Fauquier county, Virginia, November 28, 1888, upon the depositions of the subscribing witnesses, Tracy and Fenton; that Thomas M. Turner did not tell complainants of the terms of the will, but afterwards represented to them, and led them to believe, that he was the beneficiary of the same; that after the probate of the will, Thomas M. Turner returned to Washington and had several interviews with Tracy, and on November 30, 1888, received from him the notes described in his receipt to Tracy of that date; that he did not receive the $1,800 described as " lots on Maryland avenue, N. E."

This item, it was afterwards shown, represented real estate in the name of Tracy in which he had invested funds of his own and of Silas H. Turner; that none of said money was paid over to the complainants, but some parts were expended by said Turner in their maintenance, he not having sufficient property of his own to provide for them properly. Some evidence was introduced by the defendants, on the part of relations of Silas H. Turner, who were present when the will was found, to the effect that it was read and its provisions discussed and generally known at the time; but neither the complainants nor their mother were present—they were, in fact, at home in Louisiana.

Erle H. Turner testified that he came of age October 21, 1889; that he was in Louisiana at the time of the death of Silas H. Turner, whom he had never seen, and had no knowledge of the disposition of his estate; that he was informed that his father inherited his estate; that he was in Washington in 1891 and saw Tracy, who told him that he had an interest in the estate, and that he (Tracy) had invested it in real estate, but did not say how much; that he did not know what the interest was or what it consisted of until he got the list from Thomas M. Turner just before bringing this suit; that Thomas M. Turner was in Washington in April, 1891, and turned him over $1,200, which he deposited in bank; that with the exception of a visit to Texas, he remained east, staying at Philadelphia most of the time; that he also received two notes from Thomas M. Turner; that the payment was made in settlement of his father's indebtedness to him on account of his share of a wheat crop raised on the farm in Wilbarger county, Texas, which Thomas M. Turner bought and improved in 1889 and 1890. Certain letters were introduced as passing between Erle H. Turner and Philip A. Tracy between November 20, 1893, and April, 1898. During this period Tracy remitted him sums of money in various amounts, aggregating $1,365, for which Erle H. Turner executed receipts.

Without setting out these letters or giving the substance of each of them it is sufficient to say that the first of Tracy's, dated November 20, 1893, and the second, dated March 16, 1894, tend to corroborate Erle Turner's statement that he had no knowledge of the amount or nature of the trust fund in the hands of Tracy, but supposed that it was a sum much less in amount than afterwards learned, and was then invested in real estate. In the first he said: "The ground upon which I loaned the estate money and some of mine would not, I fear, bring enough to get us out clear, if sold now, and so I will have to wait for better times. * * * I look for a still further decline in real estate values." He then advises him to get any employment he can and to "stay right where you are and work like a Turk." In the second he advises him to work if he can even get enough to pay his board, and says he will try to let him have some money before long. He then adds: "I am trying to sell the ground upon which the estate's money and $1,400 of mine is loaned, but I can find no one that seems to want it, though they say it is good for the loan." In a third letter, of May 8, 1894, he says: "I am sorry for you, but you should never have come East without money in such times as these. I have no money in hand belonging to the estate, though I have been trying my best to collect interest on the notes. I sent you $20 in a letter March 22, which I suppose you received." * * * "I had all the money belonging to the estate in hand and was ready to turn it over to your father, but, you remember, you and your mother raised a racket. I consulted a lawyer and he advised me to hold back. The money was then invested and you have drawn the interest as long as it was paid up to the time the panic came on. Since then I have not been able to collect anything." As late as February 11, 1898, he wrote, "I have no money in hand belonging to you or the estate. It is all in the ground."

Miss Wilmer Turner testified that she became twenty-one years of age October 11, 1896. In 1890, 1891, 1892, and 1893 she was at school in Virginia. She taught school in Virginia in 1894, and went to Texas in 1895 and lived with the family in Vernon, Wilbarger county, they having removed there from Louisiana in 1889 or 1890. In September, 1896, she returned to Virginia and taught school there, receiving from $100 to $145 per year with her board. She, as the others, had the impression that Silas H. Turner had left his estate to her father. She had no knowledge of the facts until just before bringing suit, though she had heard between 1893 and September, 1896, from her mother that she had some interest in funds in Tracy's hands. She heard from her mother of Tracy's letter to the latter dated August 21, 1894, giving his account of the investment. In that letter to Mrs. Turner Tracy said: * * *

"There is no money in my hands belonging to the estate of S. H. Turner. After you and Erle raised a fuss because he had not gotten his share, I became alarmed and consulted a lawyer, and he advised me not to turn over another dollar of the estate money until Mr. Turner qualified for the full amount of the estate. I informed your husband of the fact, and he declined to qualify (the bond would be over $50,000) and he and Erle agreed that I should invest the money so that it might be earning something while in my hands. I then invested the money in what was then good real estate paper, but the panic came on last year, the endorser of the notes failed in business, and the land has depreciated in value, so that if it were sold now I do not think it would bring half the amount of the notes. I have over $1,400 of my money in the same land. If times should ever get good again, (which I doubt,) the land would be ample security for the notes."

In 1895 Tracy, who was in the Postoffice Department, procured a ticket from Charlottesville to St. Louis, and sent it to Miss Turner, who was about to visit Texas. There was no correspondence between them relating to any interest of hers in Silas H. Turner's estate. His letter shows that he knew she had been teaching for $100 per year, which he wrote her was a "good salary" these hard times (August 7, 1897).

Thomas M. Turner testified to deceiving his children in regard to the contents of Silas Turner's will at the time and to his continued concealment. It appears that the paper containing the list of notes given by Tracy to Silas H. Turner was on two sheets pasted together at the top; neither was a full sheet. The discrepancy between the total of this list and that showing the receipt of Thomas M. Turner was accounted for by Thomas M. Turner substantially to this effect:

He said that when he returned to Washington Tracy handed him the list which afterwards he signed the receipt for and asked if it would be a satisfactory settlement; that having examined it that night he was not satisfied, as there was a difference of about $6,000; that he told Tracy of this at the next interview and Tracy said he would not qualify as executor of the will, and that if I attempted to qualify as guardian or administrator he was satisfied the heirs of my brother in Virginia would contest the will; he further said there would be a good deal of cost attached, and that I would have to give a bond of double the amount of the whole estate and that would be difficult for me to do; he also said there would be a legacy or inheritance tax of several thousand dollars; that all things considered, this amount would be more, perhaps, than I could get clear if I were to administer; that if I would settle by this list, he would turn over the property to me without having anybody appointed as executor or administrator, and the notes could be put in bank and collected; that if I would get away quick that would prevent the other heirs from trying to break the will. Witness further said that he accepted the notes tendered, though less by about $6,000, than the amount in Tracy's hands, because he thought it best not to antagonize him, and that he thought it was the best that he could do. In a letter of Philip A. Tracy to Thomas M. Turner, dated May 7, 1892, referring to $2,600 which he has invested at 8 per cent. interest, he said: * * * "I have thought something of transferring to Miss Henrietta a part or perhaps all of the commission I charged on your brother's estate (5 per cent.), as she was left out in the will and is poor." * * * "This amount of my charge for attending to the business for sixteen years ($120 a year) will stand."

Several witnesses of the defendants (all relations of Thomas M. and Silas H. Turner) testified to the facts concerning the finding of the latter's will and the general knowledge of its contents, etc. These said that Thomas M. Turner told them, after his return from Washington in November, 1888, that he had given up $6,000 that went in the way of commissions to Tracy; that when told that this was a large commission Turner replied that he thought it would be better to settle on Tracy's terms, for if he did not it would protract the settlement of the estate and might cost more in the end. One of these witnesses said he had never heard of any intention to contest Silas H. Turner's will.

Defendants produced the paper of instructions by Philip A. Tracy, a copy of which has been given in the statement of their answer, and it was agreed to be in the handwriting of said Tracy. Tracy had neither children, brothers, or sisters, nor father or mother at the time of his death. His will was read in evidence. It appoints defendants executors and after certain small legacies gives the bulk of his estate to the trustees of Trinity Episcopal church and the trustees of Epiphany Church home, in the city of Washington.

On October 10, 1892, the court entered the following decree:

"This cause came on regularly to be heard upon the pleadings and evidence, and having been argued by counsel for complainants and defendants and submitted to and considered by the court, it is, by the court, this tenth day of October, A. D. 1902, adjudged, ordered, and decreed:

"First. That the defendants' testator, Philip A. Tracy, was trustee for the complainants in respect of all the property and estate of Silas H. Turner being or coming into the hands of said Tracy at and after the death of the said Silas H. Turner.

"Second. That the complainants are entitled to an accounting from the defendants as executors of the said Philip A. Tracy of and concerning the moneys and properties received by said Tracy from said Silas H. Turner.

"Third. That this cause be and the same hereby is referred to the auditor of this court to state such account, and that on such accounting the defendants shall be entitled to credit for the sums which it appears from the evidence were paid at various times by the said Tracy in his lifetime to Erle H. Turner, one of the complainants, after said Erle H. Turner had attained his majority.

"Fourth. That for the purpose of stating the account herein directed to be stated and of ascertaining what credits the defendants may be entitled to the auditor is to consider all the testimony in the case bearing on that subject and is authorized to take further testimony, as the parties to this cause may desire, as to the correctness of the allegation of the defendants that the money received by Thomas M. Turner from said Tracy was expended for the benefit of the complainants or any of them, that the expenditures were reasonable for the complainants under the circumstances, and that the said Thomas M. Turner was unable to support the complainants, his children, from his own means.

"Fifth. Upon the completion of said hearing before the auditor the said auditor shall report to this court the said statement of account and his proceedings under this reference for the final decree of this court thereon."

From this decree defendants entered notice of appeal on October 29, 1892. Appeal bond was filed and citation issued and served. On the same day the following stipulation was entered into:

"It is hereby stipulated and agreed that the appeal taken to the Court of Appeals of the District of Columbia by the defendants in the above-entitled cause from the decree entered on the 10th day of October, 1902, by the supreme court of the District of Columbia, sitting in equity, shall not be heard in said Court of Appeals until the appeal that shall be taken from the decree to be entered upon the coming in of the auditor's report on the reference made to the auditor in and by the aforesaid decree shall be heard; also that the transcript of the record on said first appeal and the transcript of the record of the proceedings since said appeal shall together constitute the record on said last appeal; and further that request shall be made to said Court of Appeals to pass such order as may be necessary to carry into effect this agreement, and to secure the hearing by said court upon a complete record of the appeal from said decree of October 10, 1902, and from the decree that shall be entered upon and in respect of the auditor's report by the said supreme court of the District of Columbia.

"October 29, 1902."

The transcript of the record was filed in the Court of Appeals in due time, and the cause was docketed in said court as No. 1266. Pursuant to the agreement, the case was continued from time to time to await the auditor's report and the final decree thereon.

The auditor made a report on March 9, 1904, accompanying the same with a statement of the account taken.

He charged Tracy, as trustee, with the notes and cash belonging to Silas H. Turner's estate on September 28, 1888, amounting to \$27,611.35, but credited the same with funeral expenses and other charges, \$630, making the total, \$26,981.35. He also charged Tracy with \$3,069.65 as the amount received from the real estate investment of \$1,800 mentioned in the original statement and list given by him to Silas H. Turner. Interest was also charged on these balances.

This fund was apportioned among the four complainants in equal portions. Erle Turner was charged with the payment made by Tracy to the amount of \$1,365, with \$400 received while a minor and with the value of two notes received from those belonging to the estate amounting to \$525. Each of the others was charged with the cost of education and maintenance that had been paid by Thomas M. Turner out of the fund received by him from Tracy. These sums amounted in the aggregate, including interest from September 30, 1888, to \$48,641.44.

The defendants excepted to the report of the auditor of any liability whatever, and especially because the same was not determined by the receipt of Thomas M. Turner, instead of by the original list of notes furnished by Tracy to Silas H. Turner. Special exceptions were also taken to the charge of interest on the trust fund, to the failure to charge Erle H. Turner with the sum of \$1,200 paid to him by Thomas M. Turner, April 10, 1891, and to the failure to charge Wilmer Turner with an additional sum of \$360 on account of education and maintenance by Thomas M. Turner. These exceptions were all overruled. A stipulation of counsel was filed on the hearing, in which it was agreed that the defendants had in their hands as executors, subject to final decree, the sum of \$47,000, and lots 1 and 7 in block 649 in the city of Washington. It was further agreed that all debts proven against the estate had been paid, except that of complainants, and that all debts and the legacies, except \$1,000 to the trustees of Oak Hill cemetery, \$2,000 to Trinity church, and the residuary bequest to Epiphany Church home, has been paid in full before notice of the claim of the complainants; all of which payments are assented to.

Final decree was entered on June 9, 1904, confirming the auditor's report and establishing the several demands as therein set forth. Notice of appeal was given therefrom.

On July 8, 1904, complainants moved in the equity court to dismiss this appeal because no supersedeas bond had been filed, or deposit made to cover costs on appeal, as required by the rules of the Court of Appeals. This motion was granted on the same day without notice to the defendants. July 11, 1904, the defendants filed a motion to vacate the foregoing order and for leave to file a supersedeas bond *nunc pro tunc*. This motion was supported by a naffidavit of one of complainants' solicitors which recited the former proceedings and the filing of the supersedeas bond on the appeal then taken, and approved by consent; also the stipulation as to the postponement of the hearing of that appeal. The affidavit concluded as follows:

"That in view of the fact that the defendants had filed a supersedeas bond, as aforesaid, for the small penalty with the consent of the solicitor for the complainants, and in view of the further fact, well known to said solicitor, that all the moneys and securities in the hands of the defendants were and are held subject to the decree of the court in said cause, and in view of the facts that the solicitors for the defendants had heartily cooperated with the solicitors for the complainants to obtain the speedy, complete, and final determination of the issues raised by said bill and answer, the solicitors for the defendants well supposed that the giving of a bond, in respect of the appeal taken from the decree on the 8th day of June, 1904, if not wholly unnecessary in view of the situation of the case in the Court of Appeals, was yet a matter of form, of no real importance; that the failure of the solicitors of the defendants to file a bond, as apparently required by the rules of the Court of Appeals, was occasioned by the accidental mislaying of the bond that had been prepared and signed by one of the appellants and by the inability to obtain the signature of the other appellants until after the first day of July, 1904, the day on which the time for the filing of a bond expired under the rules of the Court of Appeals."

An affidavit in opposition was filed in which it was said that counsel for complainants had discussed the effect of the former appeal with opposing counsel and expressed the opinion that the order was not appealable; that opposing counsel expressed himself as unwilling to take the risk of losing his opportunity to reverse that decree on appeal should it ultimately be held to be final, and affiant suggested to him that he might take the appeal and let it lie until after the decree on the report of the auditor; that opposing counsel then prayed for a special appeal, which was refused; that appellees will be prejudiced, etc., by the failure to give a supersedeas bond in a sufficient amount, etc. The court then vacated the order and denied the motion to give a bond *nunc pro tunc*, on the ground that the entire question was one for the adjudication of the Court of Appeals. The additional transcript was then filed in this court and docketed as number 1460.

1. A preliminary question arises on the motion of the appellees to dismiss the appeal because of the failure of the appellants to file an

appeal bond after the rendition of the final decree confirming the auditor's report. This motion was made and argued at the October term, but the court was of the opinion that it should not then be decided, and postponed its further consideration until the hearing on the merits.

It is not necessary to decide whether the first decree was of such finality in substance as to confer a right of appeal without special allowance of the same on application to this court. It is quite certain, however, that it was unnecessary, and that the defendants would have sustained no prejudice by postponing their appeal until a final decree after the auditor's report.

Under former decisions this court has no power to set aside its rules relating to appeals, and to permit a bond to be filed in this court in lieu of one that should have been filed in the court below as prescribed in those rules. Mulvihill v. Clabaugh, 21 App. D. C. 440, and cases cited.

Under the special circumstances of this case, however, we have concluded, though not without considerable doubt, that the appeal bond of October 29,1902, when taken in connection with the stipulation then entered into, is sufficient to sustain the entire appeal. The merits of the controversy were substantially determined by the first decree entered. Nothing remained thereafter but to take the account. The agreement contemplated but one record, and one hearing that should be on all points, and it is fair to presume, considering all of the conditions of the case and the fact that the executors were under bond for the preservation of the estate, that the bond was considered ample for the purposes of the appeal.

2. The first assignment of error is that the bill should have been dismissed because of a fatal variance between the allegations thereof and the proofs.

The contention is that the primary object of the bill is to impress the fund in the hands of the defendants with a trust, on the ground that the trust fund had been specifically traced into their possession as executors of Tracy. We can not concur in this limitation of the object and scope of the bill. In our opinion its allegations are sufficient to warrant the consideration of all of the evidence and the entry of the decree in accordance therewith.

3. We have no doubt of the jurisdiction of a court of equity in this case. The relations between Tracy and Silas H. Turner, even, were not those of debtor and creditor merely, at the time of the delivery by the former to the latter of the list of notes held for collection and reinvestment of the proceeds. The notes were so indorsed that Tracy could collect not only interest but principal also and *and* reinvest the same; and before Silas Turner's death it appears that he had invested some of the money in land the title to which was in his own name. While Silas Turner might have had a remedy at law against Tracy for the proceeds of the fund, we are not prepared to say that he would not have had a right to resort to equity for a complete accounting and the recovery of the proceeds and profits of the

fund when ascertained thereby had a settlement been refused him. However this may be, the relations between Tracy and the complainants, as legatees of Silas H. Turner, were those of trustees and *cestuis que trust*. By the terms of the will he was expressly charged with the distribution of the fund in his possession among the four complainants. McKee *v.* Lamon, 159 U. S. 317, 322; Cleeves *v.* Jamison, 182 U. S. 461, 479, 480, and cases cited.

Moreover, part of the fund, as we have seen, had been invested in lands along with Tracy's own money, the title to which was in his name. His correspondence with Erle Turner, and occasional payments to him, and the recitals of the paper prepared for his executors, show that Tracy regarded himself as a trustee of the complainants in respect of that part of the fund. And without regard to his right to turn over a part of the fund to Thomas M. Turner, the proof shows that he retained from him about $6,000 of the original fund to which the complainants were entitled.

4. There is no support for the contention that Tracy was relieved of any part of his responsibility to the complainants by the payment to Thomas M. Turner, and the receipt therefor executed by the latter as natural tutor and agent of his minor children. It is not pretended that there was any authority for the receipt of the fund either under the laws of Virginia, where Silas H. Turner lived and died, and where his will was probated, or under the laws of the District of Columbia, where Tracy resided and where the fund was deposited. Even if resort could be had to the law of Louisiana, where the complainants then lived, we find nothing in the articles of the code of that State, which have been brought to our attention, that empowered their father to receive the fund as their tutor, guardian, or agent.

5. There being no doubt of the right of the infants Ashby and Lunette Turner to recover their interest in the trust fund, it remains to inquire whether the adults Erle and Wilmer are barred by reason of their laches.

Under the circumstances it may be questioned whether the bar of laches can be claimed at all on behalf of Philip A. Tracy, who died in July, 1898, because of any express repudiation of his trust brought directly to the knowledge of these complainants within a proper time before his death.

But passing that by, we are clearly of the opinion that there has been no such laches on the part of Wilmer Turner as would justify the denial of her recovery of her part of the fund.

As was said in Pryor v. McIntyre, (7 App. D. C. 417, 430): "The familiar maxim that 'equity aids the vigilant' is a typical doctrine of equity jurisprudence, and in its application best illustrates the beneficent spirit of its administration. The rule is neither arbitrary nor technical; but capable of rigid contraction on the one hand and of wide expansion on the other in the sound discretion of the chancellor, according to the special circumstances of each particular case. The idea is well expresed by Mr. Justice Brewer in the following words: 'The length of time during which the party neglects the assertion of his rights, which must pass in order to show laches, varies with the peculiar circumstances of each case, and is not, like the matter of limitations, subject to an arbitrary rule. It is an equitable defense controlled by equitable considerations, and the lapse of time must be so great and the relations of the defendant to the rights such that it would be inequitable to permit the plaintiff to now assert them.' Halstead v. Grinnan, 152 U. S. 412, 416." See, also, McIntyre v. Pryor, 173 U. S. 38, 53; Townshend v. Vanderwerker, 160 U. S. 171 186.

Applying these principles to the evidence relating to Erle H. Turner, we are of opinion also that the defense of laches is not maintainable as to him. The testimony shows that until a short time before the suit was brought he had no definite information of the character and amount of the fund in which he had an interest, or of Tracy's misfeasance. Granting that his information was sufficient, under ordinary circumstances, to put him upon inquiry that might have led to full knowledge, we find enough in the relations between him and Tracy, and in the conduct of the latter, as shown in his letters and the payment of small sums of money, from time to time, to reasonably excuse his failure to prosecute that inquiry. Nor has the death of Tracy raised up any special equity on behalf of his estate. No prejudice has accrued therefrom through the loss of any source of material testimony.

6. We find no error in the allowance by the auditor, and its confirmation by the decree, of interest upon the fund in Tracy's hands from November 30, 1888, when he violated his trust by paying the bulk of the fund to Thomas M. Turner, and retaining the remainder, about $6,000, and using it for his own benefit.

7. We are of the opinion that the assignment of error founded on the refusal of the court to sustain the exception to that of the auditor's report denying the credit of $1,200 upon the portion of Erle H. Turner is well taken. This money was paid to Erle Turner by Thomas M. Turner in the city of Washington, April 10, 1891, at which time also he received the two notes with which the auditor had charged him. He claims that this was in settlement of a debt due by Thomas M. Turner to him, on account of a small sum of money belonging to him when a boy, which Thomas M. Turner had in his possession, and of an interest in two crops of wheat raised by him on the Texas farm in 1890 and in 1891. The testimony relating to this is not entirely satisfactory, but passing that, we think it is a proper credit in favor of Tracy, because it is clear that the payment was made with money and notes derived from the fund. Thomas M. Turner had no money of his own at the time and rarely had any at any other time, except that derived from the notes surrendered to him by Tracy in September, 1888.

For the same reason that the amount of the two notes was charged to him in the account, we think that this money, derived from the same source, should have been charged to him therein also.

The final decree having been found to be correct in general, will be modified so as to charge the interest of Erle H. Turner with the said sum of $1,200 as of the date of its receipt by him; and as so modified will be affirmed with costs. It is so ordered, modified, and affirmed.

TUESDAY, *February 7th, A. D.* 1905.

January Term, 1905.

JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased, Appellants,
vs.
ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Next Friend,
No. 1266.

and

JOSEPH J. DARLINGTON and GEORGE W. GRAY, Executors of Philip A. Tracy, Deceased, Appellants,
vs.
ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Next Friend,
No. 1460.

Appeal From the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the supreme court of the District of Columbia, on separate appeals, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, modified so as to charge the interest of Erle H. Turner with the sum of $1200 as of date of receipt by him, April 10, 1891, and as so modified, be and the same is hereby affirmed with costs.

Per MR. CHIEF JUSTICE SHEPARD.

February 7, 1905.

WEDNESDAY, *February 15th, A. D.* 1905.

JOSEPH J. DARLINGTON and **GEORGE W. GRAY**, Executors of Philip A. Tracy, Deceased, Appellants,
vs.
ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Next Friend,
No. 1266.

and

JOSEPH J. DARLINGTON and **GEORGE W. GRAY**, Executors of Philip A. Tracy, Deceased, Appellants,
vs.
ERLE H. TURNER, WILMER TURNER, ASHBY TURNER, and Lunette Turner, by Wilmer Turner, Their Next Friend,
No. 1460.

On motion of Mr. Clarence R. Wilson, of counsel for the appellants in the above entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States, and the bond to act as supersedeas is fixed at the sum of seventy-five hundred dollars.

(*Bond on Appeal.*)

Know all men by these presents, That we, Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, as principal, and Aetna Indemnity Company, as surety, are held and firmly bound unto Erle H. Turner, Wilmer Turner, Ashby Turner and Lunette Turner in the full and just sum of seventy-five hundred dollars, to be paid to the said Erle H. Turner, Wilmer Turner, Ashby Turner and Lunette Turner, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successor, successors and assigns jointly and severally, by these presents.

Sealed with our seals and dated this — day of February, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said court, between Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, appellants, and Erle H. Turner, Wilmer Turner, Ashby Turner and Lunette Turner, by Wilmer Turner, next friend, appellees, a decree was rendered against the said Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, and the said Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Erle H. Turner, Wilmer Turner, Ashby

Turner and Lunette Turner, by Wilmer Turner, next friend citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, that if the said Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JOSEPH J. DARLINGTON. [SEAL.]
GEO. W. GRAY, [SEAL.]
Executors of Philip A. Tracy, Deceased.
THE AETNA INDEMNITY CO.,
By WILLOUGHBY S. CHESLEY,
Resident Vice-Pres'd't. [SEAL.]
Attest: LOUIS A. YOST,
Resident Assist. Sec'y. [SEAL.]

[Seal of the Aetna Indemnity Co., Hartford, Conn.]

Sealed and delivered in presence of—
E. L. WHITE,
As to George W. Gray.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 1266 & 1460. Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, appellants, vs. Erle H. Turner, Wilmer Turner, Ashby Turner, and Lunette Turner, by Wilmer Turner, next friend. Supersedeas bond on appeal to Supreme Court of the U. S. Court of Appeals, District of Columbia. Filed Feb. 24, 1905. Henry W. Hodges, clerk.

UNITED STATES OF AMERICA, *ss:*

To Erle H. Turner, Wilmer Turner, Ashby Turner, and Lunette Turner, by Wilmer Turner, their next friend, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 24th day of February, in the year of our Lord one thousand nine hundred and five.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service of the within citation acknowledged this 25th day of February A. D. 1905.

W. G. JOHNSON,
Solicitor for Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed Feb. 25, 1905 Henry W. Hodges, clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 423 inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, appellants, vs. Erle H. Turner, Wilmer Turner, Ashby Turner and Lunette Turner, by Wilmer Turner, next friend No. 1266 and Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, appellants, vs. Erle H. Turner, Wilmer Turner, Ashby Turner and Lunette Turner, by Wilmer Turner, their next friend No. 1460 January term, 1905, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 11th day of March A. D. 1905.

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

[Seal Court of Appeals, District of Columbia.]

Endorsed on cover: File No. 19,660. District of Columbia Court of Appeals. Term No. 196. Joseph J. Darlington and George W. Gray, executors of Philip A. Tracy, deceased, appellants, vs. Erle H. Turner, Wilmer Turner, Ashby Turner *et al.* Filed March 14th, 1905. File No. 19,660.